

# BCI EXHIBIT

*77*

1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555 (JMP)  
8 HOLDINGS, INC., et al, (Jointly Administered)  
9 Debtors.

10 -----x

11  
12 \* \* \*HIGHLY CONFIDENTIAL\* \* \*

13 DEPOSITION OF STEPHEN KING

14 New York, New York

15 September 10, 2009  
16

17 Reported by:

18 MARY F. BOWMAN, RPR, CRR

19 JOB NO. 24299  
20  
21  
22  
23  
24  
25

Page 2	Page 3
<p>1 2 3 4 5 September 10, 2009 6 9:35 a.m. 7 8 9 Deposition of STEPHEN KING held at 10 the offices of Jones Day, LLP, 222 East 41st 11 Street, New York, New York, before Mary F. 12 Bowman, a Registered Professional Reporter, 13 Certified Realtime Reporter, and Notary Public 14 of the State of New York. 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 APPEARANCES: 3 JONES DAY, LLP 4 Attorneys for Lehman Brothers, Inc. 5 222 East 41st Street 6 New York, New York 10017-6702 7 BY: WILLIAM HINE, ESQ. 8 GEORGE E. SPENCER, ESQ. 9 10 BOIES, SCHILLER &amp; FLEXNER, LLP 11 Attorneys for Barclays and The Witness 12 575 Lexington Avenue 13 New York, New York 10022 14 BY: JACK STERN, ESQ. 15 16 QUINN, EMANUEL, URQUHART, OLIVER &amp; HEDGES, LLP 17 Attorneys for the Creditors Committee 18 51 Madison Avenue 19 New York, New York 10010 20 BY: ROBERT K. DAKIS, ESQ. 21 22 23 24 25</p>
Page 4	Page 5
<p>1 2 APPEARANCES: 3 4 JENNER &amp; BLOCK, LLC 5 Attorneys for the Examiner 6 330 N. Wabash Avenue 7 Chicago, Illinois 60611-7603 8 BY: DAVID C. LAYDEN, ESQ. 9 10 HUGHES, HUBBARD &amp; REED, LLP 11 Attorneys for the SIPA Trustee 12 One Battery Park Plaza 13 New York, New York 10004-1482 14 BY: NEIL J. OXFORD, ESQ. 15 FARA TABATABAI, ESQ. 16 17 Also Present: 18 INGRID M. CHRISTIAN, Alvarez &amp; Marsal 19 20 21 22 23 24 25</p>	<p>1 2 3 4 5 IT IS HEREBY STIPULATED AND AGREED, by 6 and between the attorneys for the respective 7 parties herein, that filing and sealing be 8 and the same are hereby waived. 9 IT IS FURTHER STIPULATED AND AGREED 10 that all objections, except as to the form 11 of the question, shall be reserved to the 12 time of the trial. 13 14 15 IT IS FURTHER STIPULATED AND AGREED 16 that the within deposition may be sworn to 17 and signed before any officer authorized to 18 administer an oath, with the same force and 19 effect as if signed and sworn to before the 20 Court. 21 22 23 24 25</p>

Page 6	Page 7
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 STEPHEN KING,</p> <p>3 called as a witness by the parties,</p> <p>4 having been duly sworn, testified as</p> <p>5 follows:</p> <p>6 EXAMINATION BY</p> <p>7 MR. HINE:</p> <p>8 Q. Good morning, Mr. King.</p> <p>9 A. Good morning.</p> <p>10 Q. We met briefly off the record. My</p> <p>11 name is Bill Hine. I am from Jones Day, which is</p> <p>12 the law firm representing, or acting as special</p> <p>13 counsel for Lehman Brothers Holdings, Inc. in</p> <p>14 connection with the bankruptcy proceeding that's</p> <p>15 ongoing, and this deposition is related to that</p> <p>16 proceeding.</p> <p>17 Have you ever been deposed before?</p> <p>18 A. No.</p> <p>19 MR. STERN: Can we just introduce the</p> <p>20 other people in the room.</p> <p>21 MR. HINE: Sure. Myself from Jones</p> <p>22 Day, and my associate is George Spencer, who</p> <p>23 will be joining us shortly.</p> <p>24 Do you want to go around the table?</p> <p>25 MR. OXFORD: Neil Oxford with the law</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 firm of Hughes Hubbard &amp; Reed. We represent</p> <p>3 the SIPA trustee, and my colleague is Fara</p> <p>4 Tabatabai.</p> <p>5 MR. DAKIS: I'm Robert Dakis. I'm</p> <p>6 from the law firm of Quinn, Emanuel,</p> <p>7 Urquhart, Oliver &amp; Hedges, and we represent</p> <p>8 the official committee of unsecured</p> <p>9 creditors.</p> <p>10 MR. LAYDEN: David Layden from Jenner</p> <p>11 &amp; Block.</p> <p>12 MR. HINE: This is Ingrid Christian,</p> <p>13 who has lost her voice, from Alvarez &amp;</p> <p>14 Marsal, so I will do the honors of</p> <p>15 introducing her.</p> <p>16 BY MR. HINE:</p> <p>17 Q. Mr. King, as I'm sure your counsel has</p> <p>18 explained, I am going to ask you a series of</p> <p>19 questions. You are going to provide the answers</p> <p>20 as best you can.</p> <p>21 I did want to alert you to one</p> <p>22 procedural rule we have here. From time to time</p> <p>23 during the deposition, your lawyer will</p> <p>24 undoubtedly state an objection or make some kind</p> <p>25 of statement on the record as to the form of my</p>
Page 8	Page 9
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 question.</p> <p>3 MR. STERN: Very unlikely.</p> <p>4 Q. I just want to let you know that does</p> <p>5 not relieve you of the obligation to answer the</p> <p>6 question. It is just Jack being Jack. It is Jack</p> <p>7 doing his job, stating objections to the form of</p> <p>8 the question.</p> <p>9 In that regard, I will undoubtedly ask</p> <p>10 a confusing question or a question that misuses a</p> <p>11 term that you folks in your profession use all the</p> <p>12 time. I feel like I am learning a new language</p> <p>13 here in some sense. So please correct me if I</p> <p>14 make a mistake with the term or abbreviation or</p> <p>15 some kind of concept, because I really do want to</p> <p>16 ask a clear question so you can then give me a</p> <p>17 clear answer. OK?</p> <p>18 A. Um-hm.</p> <p>19 Q. And if at any time you need a break,</p> <p>20 let me know. This is not an endurance test, so</p> <p>21 just let me know if you need a break.</p> <p>22 A. Sure.</p> <p>23 Q. Can we start with your title at</p> <p>24 Barclays? What is your title?</p> <p>25 A. I am managing director and head of a</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 group called PMTG.</p> <p>3 Q. And PMTG stands for what?</p> <p>4 A. Portfolio mortgage trading group.</p> <p>5 Principal mortgage trading group. I forgot what</p> <p>6 the P was. It has been so long since we named it.</p> <p>7 Q. How long have you held that title?</p> <p>8 A. MD I have had for three, four years, I</p> <p>9 think, and the PMTG group was formed in late 2007.</p> <p>10 Q. Could you describe for me briefly your</p> <p>11 duties in this position?</p> <p>12 A. I run the group. It is ostensibly a</p> <p>13 trading and risk management group. It is -- once</p> <p>14 upon a time its primary asset was mortgages and</p> <p>15 mortgage-related securities and derivatives</p> <p>16 thereon.</p> <p>17 We manage a portfolio of assets which</p> <p>18 the bank owned that were mortgage assets, and we</p> <p>19 also have a proprietary trading activity.</p> <p>20 Q. Who do you report to directly?</p> <p>21 A. I report to Eric Bommensath.</p> <p>22 Q. And do you know his title?</p> <p>23 A. He is global head of -- global head of</p> <p>24 fixed income, I think, and there are some other</p> <p>25 bits to it, too.</p>

Page 10

1 KING - HIGHLY-CONFIDENTIAL  
2 Q. And who reports directly to you?  
3 A. Do I need to list all of them?  
4 Q. No. I'm just interested in the  
5 principal folks that report to you directly.  
6 A. The team is -- well, the team is  
7 slightly different today than it was a few months  
8 ago. It is about 30 or so people. They are --  
9 the senior folks are -- a number of them are  
10 senior traders who trade a range of securities. I  
11 can give you their names if you like, if it is  
12 relevant, for those traders, and then there are  
13 also operations and risk management personnel as  
14 well.  
15 Q. Could you give me the heads of the --  
16 let me just ask it this way: Is your group broken  
17 into separate divisions or --  
18 A. Separate not divisions but functions.  
19 It is one trading operation, but within that, we  
20 have different products, different risks.  
21 Therefore, the group is organized along those  
22 risks. But it is really -- in the terminology of  
23 a bank, it is one desk.  
24 Q. OK. Does Mr. Yang report directly to  
25 you?

Page 12

1 KING - HIGHLY-CONFIDENTIAL  
2 result of that acquisition. So there is a slight  
3 change in character immediately prior to and  
4 immediately following the purchase.  
5 Q. When you say that acquisition, you are  
6 meaning the acquisition of Lehman assets?  
7 A. The Lehman assets, yes.  
8 Q. As you can probably expect, most of  
9 this deposition is going to center around the week  
10 of September 15.  
11 A. Right.  
12 Q. Could you give me just a general  
13 description of your role in connection with the  
14 Lehman acquisition during that week?  
15 A. Yes. My -- we are a -- I forgot P is  
16 principal and not portfolio. We are a principal  
17 risk taking or risk managing unit, so -- and  
18 essentially we were -- we manage or managed  
19 illiquid risks, particularly difficult to trade  
20 risks, particularly things like mortgages,  
21 mortgage-backed securities.  
22 So during this week and in the lead up  
23 to the week, our job was -- my job was to  
24 facilitate in gathering estimates as best as  
25 possible in a very short period of time for the --

Page 11

1 KING - HIGHLY-CONFIDENTIAL  
2 A. Yes, yes. Jasen reports directly to  
3 me.  
4 Q. Is it fair to say that you held this  
5 same position during the week of September 15,  
6 2008?  
7 A. Yes.  
8 Q. And --  
9 MR. STERN: I am just going to put out  
10 the blank September 2008 calendar, just in  
11 case Mr. King needs to reference it.  
12 MR. HINE: That's a good idea.  
13 A. It is fair to say that this group came  
14 into existence or was derived from another group  
15 which I ran in 2007 in a response to the crisis in  
16 credit markets and mortgage-related assets. So  
17 therefore, the group's character has changed in  
18 response to those conditions over the two years,  
19 or three years. I guess it is going on towards  
20 three years now.  
21 One of those things that prompted  
22 change was the bankruptcy or seize of Lehman  
23 itself. So we expanded the group in response to  
24 the need to manage the substantial portfolio of  
25 risks and assets which the bank had taken on as a

Page 13

1 KING - HIGHLY-CONFIDENTIAL  
2 for useful marks or valuations or prices for  
3 various securities that were part of the various  
4 different proposed purchase -- asset purchases,  
5 and then the on boarding of this risk and then the  
6 risk management of that risk. That was our  
7 function.  
8 Q. When you say illiquid risks or  
9 illiquid assets, is there a separate unit within  
10 Barclays that performs your function with respect  
11 to more liquid assets?  
12 A. No. A -- I mean I guess the answer  
13 probably is yes, at some point. It may be it  
14 would be Treasury or it would be something else in  
15 the bank. For the most part, banks don't hold  
16 large amounts of liquid risks, that trading  
17 functions -- the reason this group was formed was  
18 to deal with the fact that these are incredibly  
19 difficult assets to dispose of.  
20 Q. I understand.  
21 A. And they trade, many of them trade by  
22 appointment, meaning there is no exchange or  
23 obvious market that you can easily trade the  
24 assets.  
25 So we all, we do use liquid

Page 14

1 KING - HIGHLY-CONFIDENTIAL  
2 instruments and liquid assets in the risk  
3 management of these illiquid assets, so we trade  
4 everything. But that's really the reason for the  
5 existence of the business.

6 Q. I understand.

7 Before we get into the week of  
8 September 15, is your group separate and distinct  
9 from something I see referred to as PCG?

10 A. PCG is a control function. So  
11 that's -- we are a trading group as opposed to  
12 a -- so we work, I work for Eric Bommensath, who  
13 works for Jerry in the business, if you like, as  
14 opposed to product control, which is a control  
15 function which reports up ultimately into Patrick.

16 Q. Patrick Clackson?

17 A. Yes.

18 Q. So just I'm trying to picture the  
19 structure of Barclays. The PCG group reports  
20 under his reporting line, not yours, correct?

21 A. PCG is a firm-wide function. It is  
22 product control group, so it is a control  
23 function. It deals with -- our interaction on a  
24 daily basis with product control is to insure that  
25 we have mandates to trade, that we are marking our

Page 16

1 KING - HIGHLY-CONFIDENTIAL

2 A. The same.

3 Q. Meaning --

4 A. That we were provided a list of  
5 securities and assets that were -- at least what  
6 we understood were owned or held by -- the 14th is  
7 prior to the bankruptcy -- up to the bankruptcy of  
8 LBM, so that then we were looking at the assets of  
9 Lehman Brothers in its entirety.

10 Q. OK.

11 A. And then -- and there, our function  
12 was to look at just the mortgage-related assets of  
13 the Lehman Brothers overall group. But the  
14 function was then the same, so assess estimates of  
15 value or prices for categories of assets, and we  
16 never really got to the risk management stage,  
17 obviously because no transaction occurred.

18 Q. When you say assess the category or --  
19 categories of assets, were you provided a list of  
20 all the CUSIPs that Lehman held at the time or --

21 A. We were provided various lists of  
22 CUSIPs or other such descriptions of assets that  
23 Lehman held. I mean in the lead up to the 14th,  
24 it was -- because it was the whole Lehman entity,  
25 there were other assets, too, that weren't

Page 15

1 KING - HIGHLY-CONFIDENTIAL  
2 books appropriately, that we are reporting  
3 appropriately, and that all of the things that we  
4 have to do on a normal basis are administered in  
5 such a way that they can roll up into the firm's  
6 books and records, et cetera, appropriately.

7 Q. Can we talk specifically about the  
8 week of September 15, and just to set some  
9 parameters in case you are as bad with dates as I  
10 am, September 15 is the date that Lehman Brothers  
11 Holdings declared bankruptcy.

12 Can I ask you this question first.

13 You are aware there was some discussions between  
14 Barclays and Lehman prior to that filing of  
15 bankruptcy?

16 A. Yes, yes.

17 Q. Did you have any involvement in those  
18 discussions?

19 A. Yes.

20 Q. Could you describe for me generally --  
21 and again we are talking about the weekend of,  
22 say, the 12th, 13th and 14th of September, right?

23 A. Yes.

24 Q. Could you just describe for me  
25 generally your role in those sessions?

Page 17

1 KING - HIGHLY-CONFIDENTIAL

2 securities. For example, loan portfolios in  
3 Europe, so they didn't have CUSIPs. But we would  
4 also attempt to assess some kind of price for  
5 those based on some simple analysis.

6 Q. Your mandate during that period was  
7 beyond just securities, it was any illiquid asset?

8 A. No. Then we were really strictly  
9 mortgage or asset-backed type assets. There was  
10 an overall coordination of many groups. At that  
11 point there were many groups or many trading desks  
12 at Barclays in Europe and the U.S. that were  
13 attempting to assess the entire Lehman Brothers  
14 balance sheet or list of securities and assets.  
15 So we were then just one, we were focused on one  
16 part of that.

17 Q. And did you come to New York to  
18 participate in those discussions?

19 A. We are based in New York.

20 Q. So you participated in meetings with  
21 Lehman folks during that weekend?

22 A. I don't know whether we did by that  
23 weekend. That was really -- I thought that was --  
24 I thought in the lead up to that week, there was a  
25 data room that was set up by Lehman. I never went

Page 18	Page 19
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 to it actually, but one of the people that works</p> <p>3 for me did.</p> <p>4 I would have been at Lehman over the</p> <p>5 weekend, but most of what we did was phone calls</p> <p>6 to people and -- I mean in reality, there is a --</p> <p>7 it is a -- there were many, many -- this was a</p> <p>8 phenomenally complex situation just because of the</p> <p>9 number of line items. So in many respects, the</p> <p>10 approach that we took to the analysis was high</p> <p>11 level down rather than bottom up, meaning to have</p> <p>12 accurately assessed the value of an individual</p> <p>13 security by reference to talking to a trader when</p> <p>14 there were then, say, 10,000 line items was less</p> <p>15 useful than being able to initially categorize</p> <p>16 things as residential mortgage-backed securities,</p> <p>17 credit card securities, et cetera, et cetera,</p> <p>18 subordinate, senior, and then have broad</p> <p>19 valuations based on where we know similar markets</p> <p>20 trade, and then each day we just refined.</p> <p>21 Q. OK, I think I understood what you</p> <p>22 said. When you said bottom up, you mean if you</p> <p>23 had the luxury of time, you -- one might go CUSIP</p> <p>24 by CUSIP or security by security and try to assess</p> <p>25 the value of an individual security?</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. Right, right.</p> <p>3 Q. But you didn't have the luxury of</p> <p>4 time. Is that what I hear you saying?</p> <p>5 A. Luxury of time and even time -- then</p> <p>6 markets are actually moving, so I would have to</p> <p>7 be -- if you had infinite resources for a very</p> <p>8 short period of time, then you might try to go</p> <p>9 bottom up.</p> <p>10 As -- once we had a definitive set --</p> <p>11 it was really -- so the first exercise was -- and</p> <p>12 this was repeated as we went through the 15th,</p> <p>13 through the various iterations of the asset</p> <p>14 population, was one, do we have a complete</p> <p>15 description of the population, can we categorize</p> <p>16 the population, can we estimate valuations for the</p> <p>17 categories within the population, can we refine</p> <p>18 and improve those estimates, increasingly becoming</p> <p>19 more granular. Have we engaged the appropriate</p> <p>20 desks, trading desks within Barclays to -- or</p> <p>21 existing Lehman desks, to provide us as much input</p> <p>22 to where markets are or what securities -- what a</p> <p>23 particular security is.</p> <p>24 And then the last part was how do we</p> <p>25 risk -- what is the risk associated with these</p>
Page 20	Page 21
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 categories of securities and how might we either</p> <p>3 plan to dispose of the assets or in the short term</p> <p>4 risk manage the assets.</p> <p>5 Q. When you say risk manage, you mean</p> <p>6 hedging?</p> <p>7 A. For example, hedging, yeah.</p> <p>8 Q. So the process you have described, is</p> <p>9 it correct to say it started on the weekend of the</p> <p>10 13th or 14th and then continued in some form</p> <p>11 throughout the week of the 15th?</p> <p>12 A. Yes.</p> <p>13 Q. And how did it change -- well, as I</p> <p>14 understand it, on the 14th, it was concluded that</p> <p>15 there was no deal between Barclays and Lehman,</p> <p>16 correct?</p> <p>17 A. That's what I understand, yeah.</p> <p>18 Q. And how did you learn that the talks</p> <p>19 were going to start again?</p> <p>20 A. I think it was at some point on the</p> <p>21 15th or 16th, we were once again asked to look at</p> <p>22 another population of assets that was a subset of</p> <p>23 the population of assets that we had been looking</p> <p>24 at the previous week.</p> <p>25 Q. That was going to be my question. How</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 did the population of assets change from the</p> <p>3 weekend to the 15th?</p> <p>4 A. It was now the assets of LBI or what</p> <p>5 we thought were the assets of LBI as opposed to</p> <p>6 the assets of, say, LB. Because there we were</p> <p>7 looking at all assets regardless of whether they</p> <p>8 were held by LBH or LBIE or -- so, but by that</p> <p>9 point we knew we were just looking at or what we</p> <p>10 thought we were looking at was the assets that</p> <p>11 were included in the balance sheet for LBI.</p> <p>12 Q. OK. Now, were you provided additional</p> <p>13 information on the 15th or did you just use the</p> <p>14 information you had previously acquired or --</p> <p>15 A. No, we -- I'm not sure -- we may have</p> <p>16 been provided some of that information the</p> <p>17 previous week. Again, because the scope of the</p> <p>18 exercise had narrowed from the entire -- you know,</p> <p>19 us participating in a small part of assessing the</p> <p>20 overall assets of Lehman Brothers to a larger part</p> <p>21 of a much -- a subset of that overall population,</p> <p>22 which was now just the LBI assets.</p> <p>23 In keeping with the process of</p> <p>24 improved granularity of analysis as the population</p> <p>25 shrunk or the -- we were able to look at a more</p>

Page 22

1 KING - HIGHLY-CONFIDENTIAL  
2 refined list of assets on the 15th and spend more  
3 time. But we definitely reused the -- where there  
4 was overlap with analysis that we had done the  
5 previous week, we definitely reused it.

6 Q. Let's start with this document. I  
7 think -- well, during the -- now we are in the  
8 week of the 15th, starting Monday. Ultimately  
9 some kind of agreement was concluded between  
10 Lehman and Barclays on the 16th, correct?

11 A. In relation to --

12 Q. Well, an agreement was signed on the  
13 16th. Are you aware of that?

14 MR. STERN: Objection to the form.

15 A. I don't --

16 Q. Did you ever see what has been termed  
17 the asset purchase agreement in connection with  
18 the Lehman-Barclays transaction?

19 A. I have seen drafts of it.

20 Q. Were you involved in the -- I am just  
21 trying to get a scope of what your involvement  
22 was. Were you involved in the back and forth  
23 negotiations as to the terms of the asset purchase  
24 agreement?

25 A. No, no.

Page 24

1 KING - HIGHLY-CONFIDENTIAL  
2 we sit down and have conversations with people,  
3 very, very limited.

4 Q. Well, I understand the providing of  
5 information part of the discussion, but separate  
6 from that, was there a back and forth as to the  
7 valuation or marking of particular Lehman assets  
8 that were the subject of the discussions?

9 A. I don't think so really. The -- on  
10 the 15th and 16th. No. I think for the most part  
11 the 15th and 16th was trying to establish have we  
12 got -- these exercises are -- they take a lot of  
13 effort.

14 Q. Sure.

15 A. And the reason why we were involved  
16 was because we had some proficiency in dealing  
17 with understanding new populations of securities  
18 or assets, because that's what we had been doing  
19 for the last year and a half.

20 So one thing that we -- one thing that  
21 is critical is to insure that you are not spending  
22 a tremendous amount of time working on things that  
23 were irrelevant. So the first thing we need is to  
24 be sure that we have got the correct population.  
25 If we are spending time analyzing something that

Page 23

1 KING - HIGHLY-CONFIDENTIAL

2 Q. In the course of your -- well, let me  
3 get back to the 15th. On the 15th and 16th, did  
4 you participate in meetings between Barclays and  
5 Lehman?

6 A. I don't think so. I mean we may have  
7 done on the 16th, but if it was, it was strictly  
8 to do with identifying the -- you know, a trader  
9 who may have been able to provide us clarity about  
10 what a particular security was. But I think --  
11 but there wasn't an awful lot of that that we had  
12 to do.

13 And it was very -- you know, we did  
14 more of that in the previous week when we were  
15 trying to understand what the asset population  
16 was. That was really when we needed some  
17 assistance with people from Lehman.

18 But on the 16th, around the 15th and  
19 16th, the only thing I could think, we probably --  
20 there must have been some dialog, have we got a  
21 list of securities to look at. So I would think  
22 that we were sent lists, so if you wanted to  
23 include e-mails sending us lists of securities,  
24 I'm sure that yes, there is communication.

25 But communication in the sense of did

Page 25

1 KING - HIGHLY-CONFIDENTIAL

2 isn't going to be delivered, then we have  
3 definitely wasted time. We are coming up with a  
4 wrong valuation and we will never manage the  
5 correct risk.

6 So I think mostly around the 15th and  
7 16th would have been, well, OK, what are we  
8 looking at this time? And of course during the  
9 course of that week, and that's why -- you know,  
10 my -- the only reason why I am vague as to exactly  
11 what happened the 15th, 16th and 17th, is that it  
12 changed so much so rapidly, that most of what was  
13 happening on the 15th and 16th and almost all of  
14 what we were looking at became redundant by some  
15 time on the 16th, 17th or 18th.

16 MR. STERN: Let me just to clarify, I  
17 take it you are focusing on what Mr. King's  
18 role was and what he was involved in, and  
19 when he uses the term "we," he is referring  
20 to himself and his group as opposed to  
21 Barclays as a whole.

22 THE WITNESS: That's absolutely  
23 correct.

24 MR. HINE: I understand. I  
25 understand.



Page 26	Page 27
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. But, Mr. King, you folks didn't accept</p> <p>3 the -- at face value the valuations or marks that</p> <p>4 Lehman had put on various asset groups, did you?</p> <p>5 A. No.</p> <p>6 Q. Did you come to some conclusions about</p> <p>7 the accuracy of Lehman's marks when you were</p> <p>8 looking at all these asset groups?</p> <p>9 A. It is a peculiar way to describe it,</p> <p>10 did we come up with some assessment of the</p> <p>11 accuracy of Lehman's marks. In some respects I</p> <p>12 could say I didn't care about Lehman's marks. I</p> <p>13 cared about what was a reasonable assessment for</p> <p>14 the value of the assets and ultimately what was</p> <p>15 the risk that we were going to have to manage.</p> <p>16 If you think about the way a -- as a</p> <p>17 trader would think, we received phone calls from</p> <p>18 somebody saying I'd like you to buy -- would you</p> <p>19 be interested in buying the following at a price</p> <p>20 or 72. It is fascinating it is 72 they would like</p> <p>21 to sell it to me at, but mostly I am interested in</p> <p>22 where we would be interested in buying it, 55.</p> <p>23 So can I therefore say ex post facto</p> <p>24 that, you know, well, I have got some -- I didn't</p> <p>25 think their offer of 72 was particularly accurate,</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 that's an inadvertent output of the fact that we</p> <p>3 wanted to bid it at 50-something.</p> <p>4 Q. I think my question exhibited my</p> <p>5 inexperience in this field, so I will try again.</p> <p>6 Did you -- when you received the</p> <p>7 information from Lehman, it had some kind of book</p> <p>8 value ascribed to it by Lehman, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Did you understand that by the time</p> <p>11 Barclays and Lehman signed an agreement, that</p> <p>12 there was going to be some kind of discount off of</p> <p>13 that book value for the pool of assets that</p> <p>14 Barclays was going to be acquiring?</p> <p>15 A. The signing of the agreement on the</p> <p>16 Tuesday that you have told me about?</p> <p>17 Q. Yes, yes.</p> <p>18 A. -- or later --</p> <p>19 Q. Yes.</p> <p>20 A. I don't know much -- I don't really</p> <p>21 know what agreement was reached on the 16th. All</p> <p>22 I know is that there was some assets that we were</p> <p>23 looking at. I would assume that it wouldn't have</p> <p>24 been at all a surprise to anybody that a bid, even</p> <p>25 a reasonable bid or reasonable assessment of a bid</p>
Page 28	Page 29
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 for small size would be at a discount to book</p> <p>3 value if that's the valuation that you are</p> <p>4 referring to. Book value being where it is held</p> <p>5 in books and records.</p> <p>6 Q. Well, I guess I understand your</p> <p>7 answer, but do you have any recollection of</p> <p>8 discussions during that period of time -- and</p> <p>9 again I'm talking the 15th and 16th -- about</p> <p>10 either discounting or reducing the values that</p> <p>11 Lehman had ascribed to these pools of assets in</p> <p>12 order to come to an agreement as to the pool of</p> <p>13 assets or the marks for the pool of assets that</p> <p>14 Barclays was going to acquire?</p> <p>15 MR. STERN: This is you personally.</p> <p>16 A. This is me personally. I have never</p> <p>17 had any conversations with anybody at Lehman about</p> <p>18 discounting Lehman's marks. It is definitely the</p> <p>19 case that in the crudest -- if somebody said to</p> <p>20 me, Stephen, here is a security, you don't know</p> <p>21 what it is, but, you know, it is -- it has a</p> <p>22 price -- the last time it traded it had a price of</p> <p>23 50, let's say, mentally, I would say, well, I know</p> <p>24 it is not -- I certainly wouldn't be bidding 50.</p> <p>25 I would be bidding half of that or 20 percent of</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 that or 80 percent of that or some number.</p> <p>3 So it is definitely the case that when</p> <p>4 we were trying to guess what might be a reasonable</p> <p>5 value, in a very, very distressed market --</p> <p>6 Q. Sure.</p> <p>7 A. A very, very distressed market for a</p> <p>8 very, very substantial number of assets that</p> <p>9 Barclays would want to be selling, and Barclays</p> <p>10 didn't -- bear in mind, Barclays didn't want these</p> <p>11 assets. The assets were -- you wouldn't want to</p> <p>12 hold on to them. They consume capital. They need</p> <p>13 to be funded. Funding was expensive, capital was</p> <p>14 expensive.</p> <p>15 The assets were part of, you know, a</p> <p>16 deal, and therefore, they would -- and, you know,</p> <p>17 the -- I avoided the word "hedging" when you used</p> <p>18 hedging because hedging doesn't really -- hedging</p> <p>19 still means there is a left-over risk. You never</p> <p>20 really -- especially with assets like this.</p> <p>21 Hedging is just, well, I have got one thing that</p> <p>22 I'm short against something I am long. It is not</p> <p>23 very well hedged, there is still a risk, and</p> <p>24 that's why banks and hedge funds have had quite a</p> <p>25 lot of difficulty in the last few months.</p>

Page 30	Page 31
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 So we knew that the objective would be</p> <p>3 that we need to dispose of this risk. That was</p> <p>4 the objective. So if I was looking at a portfolio</p> <p>5 of assets, and you held the assets at 100, let's</p> <p>6 say, I'd say I don't know -- and I felt</p> <p>7 comfortable that I understand what the assets are,</p> <p>8 my bet is I couldn't sell those for more than</p> <p>9 80 cents of where you have currently ascribed a</p> <p>10 value to them.</p> <p>11 So yes, when we -- as a desk, the "we"</p> <p>12 meaning my group, one of the first things that we</p> <p>13 did was say, let's just assume that the stuff we</p> <p>14 don't know is at 50 percent of book value. The</p> <p>15 stuff that is exchange traded equities is at</p> <p>16 95 percent of where it is, because that was a --</p> <p>17 the crudest form of guess.</p> <p>18 Q. Is that the type of analysis you were</p> <p>19 doing on the 15th and 16th when you described -- I</p> <p>20 think you previously talked about a top-down</p> <p>21 approach as opposed to bottom up?</p> <p>22 A. Yes. Because you do that -- really if</p> <p>23 you think about it, you repeatedly do that same</p> <p>24 process at an ever-more granular level. Even if</p> <p>25 you got down to an individual security, a trader</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 would say I've projected -- the thing about some</p> <p>3 of these securities and assets is, unlike -- not</p> <p>4 all of them but some of them, and certainly the</p> <p>5 ones that we would have been looking at at this</p> <p>6 time, they are not -- even though many of them are</p> <p>7 called fixed income or debt instruments, the</p> <p>8 amount of cash that they would be expected to</p> <p>9 ultimately pay is actually uncertain, either</p> <p>10 because there is a lot of risk associated with the</p> <p>11 borrower or there is a prepayment risk or there is</p> <p>12 something that makes the cash flow uncertain.</p> <p>13 So the way a trader would look at it</p> <p>14 is to say, I'll make a -- I'll form a view of how</p> <p>15 much cash that I would want -- that I expect to</p> <p>16 receive on this security, and then I would want to</p> <p>17 discount the amount of cash back to some price</p> <p>18 that I felt that I was earning an appropriate</p> <p>19 yield on. And then when a trader was then</p> <p>20 subsequently bidding, they then may provide --</p> <p>21 say, actually I'll bid 80 percent of that.</p> <p>22 So whether it is at the portfolio</p> <p>23 level, when we are looking at a whole balance</p> <p>24 sheet, or an individual CUSIP, in many respects</p> <p>25 the process is the same. It is about how</p>
Page 32	Page 33
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 confident you can be that you have assessed</p> <p>3 everything correctly, because there is so much</p> <p>4 uncertainty.</p> <p>5 Q. I think I understand that.</p> <p>6 So during this early stage now, the</p> <p>7 15th and 16th, is it correct to say you're looking</p> <p>8 at particular asset classes or groups of assets by</p> <p>9 type and performing this type of analysis on them?</p> <p>10 A. Yes, yes.</p> <p>11 Q. And so certain groups of assets, you</p> <p>12 would be willing to pay a higher percent than</p> <p>13 other groups, right, or --</p> <p>14 A. Yeah. Because to reflect the idea</p> <p>15 that the uncertainty about the price or the cash</p> <p>16 flows was more or less clear.</p> <p>17 Q. So were there particular assets or</p> <p>18 groups of assets within the Lehman portfolio that</p> <p>19 was supposed to be sold to Barclays that warranted</p> <p>20 much deeper discounts than others?</p> <p>21 A. Yes.</p> <p>22 Q. And which were the most discounted --</p> <p>23 or which groups would require the most discount</p> <p>24 from your perspective?</p> <p>25 A. The assets that are the typical assets</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 that my group manages, which is things like</p> <p>3 mortgage-backed securities, deeply distressed</p> <p>4 credit securities, things for which there is a</p> <p>5 very, very limited market and poor visibility on</p> <p>6 the expected cash flows.</p> <p>7 Q. And what kind of discounts would those</p> <p>8 groups of assets get during this week?</p> <p>9 A. To what?</p> <p>10 Q. I don't know, did you -- again,</p> <p>11 talking about the 15th and 16th, did you say --</p> <p>12 again, I might be showing my ignorance here --</p> <p>13 here is a pool of mortgage-backed security, a lot</p> <p>14 of uncertainty here, let's mark their -- let's</p> <p>15 discount their marks down by, say, 50 percent?</p> <p>16 A. Right.</p> <p>17 Q. You did.</p> <p>18 A. Yes.</p> <p>19 Q. OK. And then other, presumably other</p> <p>20 categories more secure, more visible -- again, I</p> <p>21 might be displaying my ignorance, but perhaps</p> <p>22 government securities might warrant a much smaller</p> <p>23 discount in the mark?</p> <p>24 A. Precisely.</p> <p>25 Q. Is that right?</p>

Page 34

1 KING - HIGHLY-CONFIDENTIAL  
2 A. Precisely.  
3 (Exhibit 388-B, document Bates stamped  
4 BCI-EX-S 74256 through 257 marked for  
5 identification, as of this date.)  
6 Q. Mr. King, I am handing you a copy of a  
7 document marked as 388-B, which is a two-page  
8 document with Bates numbers BCI-EX-S 00074256  
9 through 257.  
10 After you have had a minute to look at  
11 it, let me know, and I have a question or two  
12 about it.  
13 A. OK.  
14 Q. Have you had a chance to look at the  
15 document?  
16 A. Yeah.  
17 Q. Have you ever seen this document  
18 before?  
19 A. Yes.  
20 Q. When?  
21 A. I remember -- this actually is, I  
22 think this is my handwriting on it, and I also saw  
23 it yesterday.  
24 Q. When you say "my handwriting on it,"  
25 you are referring to the second page of the

Page 36

1 KING - HIGHLY-CONFIDENTIAL  
2 got it, so I'm not going to ask you about that. I  
3 just want to focus on the second page of this  
4 document.  
5 A. I'd seen this in hard copy, which is  
6 why I have scribbled on it at some point after  
7 the -- after the 12th. It was produced on the  
8 12th.  
9 Q. This was produced by Lehman to  
10 Barclays on the 12th?  
11 A. That's what it says on the top  
12 left-hand corner of the second page, Lehman  
13 Brothers balance sheet by GAAP asset type 9/12.  
14 So I couldn't have seen it before the 12th, but I  
15 must have seen it at some point thereafter, but  
16 I'm not exactly sure when.  
17 Q. You believe you saw it over that  
18 weekend at some point?  
19 A. I had seen it during the weekend. I  
20 might have seen it during the weekend, but that  
21 was in the old -- that was in the first iteration  
22 of the potential acquisition.  
23 So I don't know when I saw it. All I  
24 know is I definitely saw it before he sent it to  
25 James Walker.

Page 35

1 KING - HIGHLY-CONFIDENTIAL  
2 document?  
3 A. Yes, yes. Sorry, I thought you were  
4 suggesting that I look at both pages.  
5 Q. Yes, yes, I was.  
6 And is it fair to assume that this  
7 document was sent to you on the 17th by Mr. Yang?  
8 A. Well, I would have seen this document  
9 before the 17th. He is sending it to James  
10 Walker. He just happens to be copying me.  
11 Q. Let me distinguish, when you say "this  
12 document," the covering e-mail is on the 17th, but  
13 the second page, you have seen that before the  
14 17th?  
15 A. Yes.  
16 Q. Can you tell me when you first saw  
17 that, the second page?  
18 A. I saw -- I think I saw a hard copy of  
19 this at some point -- was this -- yeah. This is  
20 an e-mail and this is a hard copy, so I don't  
21 quite know how -- whether Jasen had scanned it or  
22 how the two became connected, but we had seen --  
23 can I ask that? Is that --  
24 Q. Well, this is how it was produced. It  
25 doesn't really matter about the -- where Mr. Yang

Page 37

1 KING - HIGHLY-CONFIDENTIAL  
2 Q. I guess that was my question. Was  
3 this part of your analysis or discussion over the  
4 weekend for the first iteration, or did you --  
5 A. I don't remember.  
6 Q. Or did you use it in connection with  
7 the second iteration on, say, the 15th and 16th?  
8 A. I can confirm the latter part. I  
9 don't remember the former. We might have seen it  
10 in relation to the first part, but then it is only  
11 a subset. I don't really know why -- in the first  
12 iteration of the transaction, where it was buying  
13 Lehman, we never really had thought about Lehman  
14 as being multiple entities. So looking at LBI  
15 specifically prior to Sunday would have been  
16 something I wouldn't have focused on.  
17 So I don't think I looked at it at the  
18 weekend. I would think I looked at it on the  
19 Monday or Tuesday when we were told here is the  
20 next iteration of the transaction.  
21 Q. OK, OK. And you are referring to the  
22 Lehman Brothers, Inc. at the top of this document?  
23 A. Yes. This is Lehman Brothers, Inc.,  
24 as opposed to Lehman Brothers. But up to the  
25 Sunday, we were thinking Lehman Brothers. So the

Page 38

1 KING - HIGHLY-CONFIDENTIAL  
2 first thing I would have asked if somebody sent me  
3 this is, to my point about population, am I  
4 looking at everything, because otherwise this is  
5 redundant.

6 Whereas on the Monday, if someone said  
7 we are now looking at LBI, I can say is it correct  
8 that this is the population of what we are  
9 supposed to look at, and someone could say yes,  
10 and that would make sense. Now we have got  
11 something to work on.

12 So I would think I saw this on the --  
13 and also, by the way, these things, even though  
14 they say 9/12, typically it would take 24 to 48  
15 hours at least for somebody to produce this.

16 Q. OK.

17 A. So I very much doubt this -- although  
18 it is of the 12th, the 12th is close of business  
19 on the Friday, which means it almost certainly  
20 didn't exist until something like the Sunday, and  
21 I would think it was shown to us on the Monday or  
22 Tuesday.

23 Q. OK, fair enough.

24 Do you recall what you were -- I see a  
25 lot of handwriting and a lot of numbers. Do these

Page 40

1 KING - HIGHLY-CONFIDENTIAL  
2 e-mail explains that we have started to get files  
3 that should be all of this, but they don't tie  
4 out.

5 He actually points out, you know,  
6 corporate obligations, corporate stocks do not tie  
7 out to the summary. So we have been sent files  
8 that purport to be the same but that don't tie  
9 out.

10 Q. So tie out in your understanding means  
11 he is trying to compare the files of individual  
12 securities with the line item in the -- on this  
13 balance sheet and see that they add up to that  
14 total?

15 A. Exactly right. So he would have had  
16 something that says total corporate obligations  
17 and spot total, let's say. If he would have been  
18 sent a file that also purports to be corporate  
19 obligations and let's say included then the line  
20 items, a notional or a price, so he could  
21 calculate a mark, add the marks up, he ought to  
22 get back to that number, and his e-mail indicates  
23 that they don't.

24 Q. His e-mail is trying to, as you said,  
25 get the proper population of the securities in

Page 39

1 KING - HIGHLY-CONFIDENTIAL  
2 refresh your recollection about what you were  
3 analyzing?

4 A. No. These are sort of typical  
5 scribble from me. The e-mail is -- the e-mail  
6 covering is quite elucidating because it  
7 highlights -- the fact that it is a physical --  
8 one of the problems we had at that time was this  
9 is a physical. There also was -- I remember that  
10 there was -- and I don't have this, but there was  
11 a paper copy again of securities that -- these  
12 numbers are produced by Lehman's systems. So  
13 there would have been line items of all the  
14 individual securities that fed up into these  
15 numbers.

16 What Jasen is highlighting on the  
17 front is that we have obviously by the 17th, this  
18 definitely would have been the case as well,  
19 started to receive files, which would have been  
20 Excel files, I would think, and what he is  
21 starting to explain is, all right, we have started  
22 to try to understand what is the population that  
23 leads to this. If this is what we are buying, is  
24 the assets that are currently on -- the assets  
25 that are currently on LBI's balance sheet, his

Page 41

1 KING - HIGHLY-CONFIDENTIAL  
2 each group?

3 A. Yeah. And you see, as you say -- my  
4 sentence is that I have asked Jasen to send this  
5 to James, because I thought I'd seen something  
6 that looked similar to it that might help us to be  
7 able to find out. Because with this, there is  
8 almost -- again there is almost nothing you could  
9 do. You would say -- using the percentage  
10 approach, you would have to just take very heavy  
11 haircuts to these large numbers and say I don't  
12 really know what is behind this.

13 Then on his e-mail he is saying, we  
14 have got some stuff but it doesn't tie out to  
15 those numbers, and furthermore, we don't have  
16 listings for derivatives category. We are able to  
17 tie out the asset listings we were given on  
18 Monday. We were given some asset listings on  
19 Monday, so he is showing on Monday there were some  
20 files.

21 And then the last sentence is pretty  
22 interesting because it highlights the fact that  
23 the problem wasn't a static problem. It was a  
24 dynamic problem. So he has a list of securities,  
25 but he says the government and agencies book is --

Page 42	Page 43
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 although we understand from Clement Bernard that</p> <p>3 the government and agencies book is shrinking as</p> <p>4 trades are unwound.</p> <p>5 The problem here was the</p> <p>6 counterparties to Lehman were terminating their</p> <p>7 trades. So we all have now realized that although</p> <p>8 Lehman was sending us populations, minute by</p> <p>9 minute, counterparties to Lehman were terminating</p> <p>10 trades. Therefore, this population is changing.</p> <p>11 Q. I understand.</p> <p>12 A. And this was only supposedly as of the</p> <p>13 12th, which is the Friday. So by the 17th, the</p> <p>14 probability that these securities still were on or</p> <p>15 available to LBI was low.</p> <p>16 Q. OK. Thank you for that.</p> <p>17 I would like to step back to before</p> <p>18 the Wednesday, back to the Monday when you're</p> <p>19 somehow using this document in connection with</p> <p>20 your assessment of the Lehman assets. Are</p> <p>21 these -- if you look on the left-hand column, it</p> <p>22 has "GAAP asset class." Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And then it has six different asset</p> <p>25 classes listed. Are these the -- are these asset</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 classes that fell within your purview in the</p> <p>3 principal mortgage trading group as groups of</p> <p>4 assets that you were asked to look at?</p> <p>5 A. Not on -- not at this time.</p> <p>6 Q. Not on the 15th or 16th?</p> <p>7 A. No. We were -- the assets that we</p> <p>8 were looking at were the -- it was starting to be</p> <p>9 the case around the 15th and 16th that I had -- I,</p> <p>10 we, my group, had two hats that we were wearing.</p> <p>11 One was to look specifically to end up as the</p> <p>12 ultimate risk -- actually that's not true, not to</p> <p>13 end up as the ultimate risk manager, but to assess</p> <p>14 the value of specific instruments. Here the line</p> <p>15 item in here that would say total mortgage or</p> <p>16 mortgage-backed total, the 6 and a half billion.</p> <p>17 So that is a category that my group would have</p> <p>18 expected to -- or be capable of risk managing.</p> <p>19 Q. Right.</p> <p>20 A. That's one hat.</p> <p>21 There is a second hat that we were</p> <p>22 starting to wear, which was to facilitate in the</p> <p>23 coordination and aggregation of the opinions of</p> <p>24 other expert desks within Barclays on the other</p> <p>25 line items. So, for example, total government and</p>
Page 44	Page 45
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 agencies securities, governments and agencies are</p> <p>3 traded by a -- you know, there is a desk at</p> <p>4 Barclays that trades governments and agencies.</p> <p>5 Q. Is that desk outside your principal</p> <p>6 mortgage trading group?</p> <p>7 A. Yes, yes. It is in Eric's world, but</p> <p>8 it is a trading desk.</p> <p>9 Q. Eric who?</p> <p>10 A. Eric Bommensath, my boss. It is a</p> <p>11 trading desk, a customer trading desk, and we</p> <p>12 would have no -- my desk would have no advantage</p> <p>13 in providing a practical assessment of whether --</p> <p>14 of what the valuation pricing or risk management</p> <p>15 issues were associated with 39 billion dollars</p> <p>16 worth of governments and agencies.</p> <p>17 But with the hat of coordinating, we</p> <p>18 were starting around the 15th or 16th to</p> <p>19 facilitate in coordinating and aggregating that</p> <p>20 information.</p> <p>21 Q. So can I just see if I understand what</p> <p>22 you said.</p> <p>23 Your group, the principal mortgage</p> <p>24 trading group would have -- were provided the</p> <p>25 assessment, if you will, as to the total mortgage</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 and total -- and mortgage-backed securities line</p> <p>3 item, but as to the other five line items here you</p> <p>4 would have acted as facilitator?</p> <p>5 A. Correct.</p> <p>6 Q. Assembling the assessments of other</p> <p>7 groups within Barclays?</p> <p>8 A. Correct.</p> <p>9 Q. After you assembled those, presumably</p> <p>10 that enters into the negotiations between Lehman</p> <p>11 and Barclays in some way?</p> <p>12 A. Then I would have provided an</p> <p>13 assessment to somebody as to where the current</p> <p>14 estimate for the cumulative value in our view of</p> <p>15 value was for this portfolio and particular</p> <p>16 categories.</p> <p>17 Q. Who did you provide that to?</p> <p>18 A. I don't remember. It might have been</p> <p>19 a variety of people. It could have been to -- it</p> <p>20 would have been at various times to Patrick or to</p> <p>21 Mike or to whoever was asking me for it at that</p> <p>22 moment, James Walker, whoever. Some various</p> <p>23 people at various times asked for an assessment of</p> <p>24 value for different purposes, and we would provide</p> <p>25 it.</p>

Page 46	Page 47
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. Now, are you talking about people</p> <p>3 within Barclays or are you talking -- in other</p> <p>4 words, here is my -- my confusion here is this:</p> <p>5 Are you engaged in any kind of one-on-one</p> <p>6 conversations between Lehman as to the types of</p> <p>7 discounts we might apply to these different</p> <p>8 groups?</p> <p>9 A. No.</p> <p>10 Q. Or are you just providing it to other</p> <p>11 people within Barclays?</p> <p>12 A. Other people within Barclays.</p> <p>13 Q. Do you recall the conclusions you</p> <p>14 reached on the 15th or 16th about these particular</p> <p>15 asset types as far as the amount of discount that</p> <p>16 would be required?</p> <p>17 A. Not particularly. I remember that</p> <p>18 the -- I remember that the mortgage securities,</p> <p>19 for example, we carried around -- we had just said</p> <p>20 I would -- I don't think -- I would be -- I think</p> <p>21 we used something like 50 percent for the mortgage</p> <p>22 securities, for example.</p> <p>23 Q. OK. OK. Do you recall what you used</p> <p>24 for the other categories, any of the other</p> <p>25 categories?</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. No.</p> <p>3 Q. Is it fair to say, as I think we</p> <p>4 previously discussed for the less risky or more, I</p> <p>5 think you used the word visible categories, you</p> <p>6 would use a smaller discount than the 50 percent?</p> <p>7 A. Yes. And that's an interesting thing,</p> <p>8 because I remember actually that one of the</p> <p>9 categories here, total government and agencies, I</p> <p>10 remember thinking -- I think you can sort of see</p> <p>11 in some of the scribble here as well, for example,</p> <p>12 the 3.2, I could see a number 3.2 here, which I</p> <p>13 would guess is half of the 6.5 billion or the half</p> <p>14 that we were saying that -- one of the problems</p> <p>15 with that category in particular was that we</p> <p>16 didn't even know what some of the securities were.</p> <p>17 They were just -- you know, because if you look at</p> <p>18 a CUSIP, a CUSIP doesn't tell you anything. You</p> <p>19 have to get a description to go with a CUSIP.</p> <p>20 Q. When you say "that category," talking</p> <p>21 about mortgage backed?</p> <p>22 A. Mortgage backed. Unfortunately banks</p> <p>23 have a tendency of using mortgage and</p> <p>24 mortgage-backed securities to mean anything that</p> <p>25 isn't obviously something else. So it isn't just</p>
Page 48	Page 49
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 mortgages. It is CDOs, it is manufactured</p> <p>3 housing, it is franchise loans. It is a lot of</p> <p>4 stuff. Because you notice it doesn't obviously</p> <p>5 fit into any of those other categories, so it is</p> <p>6 stuff.</p> <p>7 Because it is stuff, some of it you</p> <p>8 would have no idea from the CUSIP or even the</p> <p>9 description whether it was a performing or</p> <p>10 nonperforming security, a senior obligation or a</p> <p>11 junior obligation. You would actually have to go</p> <p>12 to Bloomberg, or if in some cases it wasn't listed</p> <p>13 on Bloomberg, go to a trader and say what is this.</p> <p>14 Some of these, for example, were what</p> <p>15 they call whole business securitizations, which</p> <p>16 are secured lendings against assets of corporates.</p> <p>17 And there you would have to understand something</p> <p>18 about the company.</p> <p>19 Q. So in the end, because of all these</p> <p>20 uncertainties, you ascribed a 50 percent discount</p> <p>21 rate to that line item?</p> <p>22 A. If someone said -- yeah. But for a --</p> <p>23 if I was asked for an initial guess, a guess, I</p> <p>24 would say, you know, I can't imagine that -- if</p> <p>25 you turned around and asked somebody for a bid of</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 6 and a half billion dollars -- these securities</p> <p>3 for example, mortgage and mortgage-backed</p> <p>4 securities, they trade in -- they have -- many of</p> <p>5 them have face values, notionals of millions of</p> <p>6 dollars. Single numbers of millions of dollars.</p> <p>7 So you can see that 6 and a half billion dollars</p> <p>8 of assets is thousands of line items.</p> <p>9 Furthermore, many of them will trade</p> <p>10 at a few cents on the dollar, 5, 10, 3, 20. So</p> <p>11 there is a tremendous level of uncertainty and</p> <p>12 inaccuracy about it. And the 6 and a half billion</p> <p>13 dollars of assets, to sell 6 and a half billion</p> <p>14 dollars of assets would take a tremendous amount</p> <p>15 of time. Actually, it did ultimately take the</p> <p>16 better part of a year.</p> <p>17 So therefore, to just guess, I can't</p> <p>18 believe that if they are marked there, that if you</p> <p>19 needed to sell them or you wanted to bid them,</p> <p>20 that you would bid more than 50 cents on the</p> <p>21 dollar, would have been a guess.</p> <p>22 Now, remember, subsequently we did</p> <p>23 some work on it and came up with similar sort of</p> <p>24 numbers on it, which is why I happen to remember</p> <p>25 that one.</p>

Page 50	Page 51
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. That's the one that is within your</p> <p>3 group?</p> <p>4 A. That's the one within the group.</p> <p>5 Interesting thing, the government and agencies</p> <p>6 securities, 39 billion, I remember on -- at around</p> <p>7 this time on the 15th and 16th, I had a pretty</p> <p>8 rosy view of the liquidity of government</p> <p>9 securities and agencies, mostly because I was</p> <p>10 pretty ignorant of what they were. Of course</p> <p>11 because of the collapse of Lehman in the previous</p> <p>12 two days, there was no liquidity in these either.</p> <p>13 So these agency securities turned out</p> <p>14 to be some of the hardest securities to sell</p> <p>15 subsequently. There was a -- there wasn't</p> <p>16 39 billion dollars of them, but there was a</p> <p>17 significant population of agencies securities that</p> <p>18 were in the Fed repo facility.</p> <p>19 They took nine months to sell at a</p> <p>20 significant discount, much more than I would have</p> <p>21 ever guessed on that day, because I would have</p> <p>22 thought they were liquid. There were no liquid</p> <p>23 markets at this point.</p> <p>24 MR. STERN: Bill, could we take a</p> <p>25 brief break?</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 MR. HINE: Sure, sure.</p> <p>3 (Recess)</p> <p>4 BY MR. HINE:</p> <p>5 Q. Mr. King, I would like to continue</p> <p>6 with the second page of Exhibit 388-B, if you</p> <p>7 will. On the right-hand side of the balance sheet</p> <p>8 it's entitled "Net Short Inventory." Do you see</p> <p>9 that?</p> <p>10 A. Um-hm.</p> <p>11 Q. Was this side of the balance sheet</p> <p>12 something that you worked on in connection with</p> <p>13 these transactions, or is that someone else at</p> <p>14 Barclays?</p> <p>15 A. No. There were -- it was one of the</p> <p>16 things that -- they weren't really separable</p> <p>17 because the longs and shorts obviously were</p> <p>18 supposedly interrelated. And you can see that --</p> <p>19 it kind of highlights as well that something like</p> <p>20 the mortgage or mortgage-backed pool, if you will</p> <p>21 notice, is -- there are very few in the way of</p> <p>22 shorts against that because it is not written --</p> <p>23 it is not a -- something that is hedgeable that</p> <p>24 you would expect to have two directional markets.</p> <p>25 People buy stuff, therefore they are long,</p>
Page 52	Page 53
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 therefore all of the asset -- there is assets and</p> <p>3 there is no liabilities.</p> <p>4 Whereas something like government and</p> <p>5 agencies is an active two-way market, people</p> <p>6 borrow and sell. You can borrow securities and</p> <p>7 you can sell them, so there would be shorts.</p> <p>8 Likewise, you know, corporate equities and stocks,</p> <p>9 et cetera. Again, nonmoney market instruments and</p> <p>10 CDs, there is no way to short them.</p> <p>11 Q. So is it fair to say with respect to</p> <p>12 the right side of this balance sheet, you</p> <p>13 performed the same function you previously</p> <p>14 described, assembling assessments for the first</p> <p>15 five line items, and supervising your group and</p> <p>16 providing assessments for the last line item?</p> <p>17 A. That's correct. And as you see, there</p> <p>18 is really nothing there. So really it would have</p> <p>19 been that we would have provided the list of longs</p> <p>20 and shorts in files and sent them to the</p> <p>21 respective desks.</p> <p>22 And as Jasen says, of course, in</p> <p>23 reality -- therefore, I can't really comment much</p> <p>24 on those values because there are -- there is</p> <p>25 almost nothing that's relevant to the work that my</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 group was doing for itself for the last line item.</p> <p>3 As Jasen's e-mail on the front says, the shorts</p> <p>4 were evaporating as people closed out trades --</p> <p>5 bad choice of words I suppose. They were</p> <p>6 disappearing as people actually closed out trades</p> <p>7 against Lehman, and within 24 hours of this</p> <p>8 Wednesday, I think they became irrelevant. So</p> <p>9 there is very little work that was done on that</p> <p>10 right-hand side.</p> <p>11 Q. I understand.</p> <p>12 I think you said earlier that you were</p> <p>13 not engaged in one-on-one discussions with Lehman</p> <p>14 about the valuations of these different groups of</p> <p>15 assets?</p> <p>16 A. Correct.</p> <p>17 Q. Was there someone at Barclays who was</p> <p>18 so engaged?</p> <p>19 A. I don't know.</p> <p>20 Q. You don't know. OK.</p> <p>21 Before we leave this sheet, can I ask</p> <p>22 for a translation on some of your handwriting.</p> <p>23 The phrase says 3.8 and there's a text. Do you</p> <p>24 see that?</p> <p>25 A. Yeah.</p>

Page 54

KING - HIGHLY-CONFIDENTIAL

Q. Do you know what that says?

A. It is 3.8 mortgage -- I guess that says mortgage backs 400 million dollars HELOCs, and I don't know what the last thing would be. But it -- I don't know whether -- 3.8 may not even be related to the scribble to the right. That says morg back, mortgage backs, 400 million dollars of HELOCs and -- ah, it's seconds. HELOCs and seconds.

So, for example, the HELOCs and second liens are -- people are much more familiar with the descriptions of various types of mortgage products than they were a few years ago, but HELOCs and second liens are obviously the subordinate consumer credit attached to their real estate.

So those have -- largely are viewed as worthless, so I'm making reference that somewhere in that 6.556 is 400 million dollars of something that is worthless. I don't remember, I have no recollection as to whether the 400 million dollars was a notional or market value, but it may well have been that I was just noting that there was 400 million dollars of market value attributed to

Page 55

KING - HIGHLY-CONFIDENTIAL

second liens and HELOCs, which I would have just written off.

Q. Do you see below that has a calculation? It looks like it says 61.5 minus 57.9 equals, I assume that says 3.6. Do you see that?

A. Yes.

Q. Do you recall what that calculation related to?

A. No, it's -- I am sure that -- I do know what it -- it will have been something to do with what we were discussing about, you know, estimating how bad that 65 billion dollars -- what that 65 billion dollars might be worth. But I don't remember the calculation. It was one of --

Q. No specific recollection?

A. No. It was one of -- it is incomplete, as you can see.

Q. Right.

Mr. King, I am handing you a document that has previously been marked as Exhibit 19. If you might take a minute and take a look at it. My question is going to be do you recognize that document.

Page 56

KING - HIGHLY-CONFIDENTIAL

A. Only because I was shown it yesterday.

Q. OK. Other than your preparation for today's deposition, had you ever seen that document before?

A. I don't think so.

Q. Are you -- again -- let's -- we had previously been talking about a balance sheet from the 12th for LBI. Were there any iterations of a balance sheet presented in your discussions during the 15th and 16th?

A. I don't think so.

Q. Any revisions to what we have previously talked about as Exhibit 388-B?

A. I don't think so.

Q. So if there was, you don't recall seeing them?

A. No. If they -- you know, and as you said, sort of towards the -- sometime between the 16th and 18th, our focus changed totally to the securities that were just in the Fed facility. So it is possible that during that period, something was sent to me that was a revision, but we wouldn't have been paying attention to it.

Q. OK. Back to Exhibit 19. That's the

Page 57

KING - HIGHLY-CONFIDENTIAL

second document. Do you have any understanding of how this balance sheet is related at all to the asset purchase agreement between Lehman and Barclays?

A. Not directly.

Q. Do you have any general understanding?

A. No. It would all be -- you know, it would all be supposition of stuff that I saw subsequently that meant I could work out what this is as opposed to me ever seeing this or seeing how it was included.

Q. Do you have any recollection -- you see the number at the bottom, total assets, 72.65? Do you see that?

A. Yeah.

Q. Do you have any understanding of how Lehman and Barclays came to agree on that number?

MR. STERN: Objection.

Q. As to the asset purchase agreement?

MR. STERN: Objection to the form.

A. No, I don't think so. I mean I can -- I can look at the -- I mean if I look at the -- again, as I say, I would be -- I would be working this out now, but I could recognize that some of



Page 58	Page 59
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 the numbers that are on the asset side of the -- I</p> <p>3 mean it was quite interesting actually that what</p> <p>4 you can see on the asset side of the balance</p> <p>5 sheet, that there are some numbers that are</p> <p>6 similar to the numbers on the right hand -- on</p> <p>7 here. So, for example --</p> <p>8 Q. When you say "here," you are pointing</p> <p>9 to --</p> <p>10 A. Sorry.</p> <p>11 Q. -- Exhibit 388-B?</p> <p>12 A. I don't know how to define it. This</p> <p>13 page.</p> <p>14 MR. STERN: I will define it. It is</p> <p>15 the second page of Exhibit 388-B.</p> <p>16 Q. For the purposes of the reporter, when</p> <p>17 you say "this," we have to identify documents.</p> <p>18 A. I understand that. Second page of</p> <p>19 388-B.</p> <p>20 Q. I apologize, I interrupted you.</p> <p>21 A. For example, I could see that some</p> <p>22 numbers would look familiar on the one, which is</p> <p>23 the commercial paper 1.1 appears to be roughly</p> <p>24 total CDs and other money market instruments.</p> <p>25 That would be -- I would think that's the same</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 number.</p> <p>3 MR. STERN: So Mr. King is pointing</p> <p>4 first to Exhibit 19 and then he is pointing</p> <p>5 to the second page of Exhibit 388-B.</p> <p>6 A. Right. So this -- there are some</p> <p>7 numbers that are on both pages or approximately on</p> <p>8 both pages, the 40 billion dollars of government</p> <p>9 and agencies, the 39.173 on the second page of</p> <p>10 388-B.</p> <p>11 Q. Right.</p> <p>12 A. I vaguely remember the 2.7 billion in</p> <p>13 mortgages, which is the reduced -- the assumed</p> <p>14 number -- there was some -- there was only a</p> <p>15 subset of -- at some point, there was an iteration</p> <p>16 of discussions which -- that there would be some</p> <p>17 but not all of these assets that were included</p> <p>18 in -- that we would be receiving, and it was only</p> <p>19 roughly half or something like that of the</p> <p>20 mortgage and mortgage-backed securities. And I</p> <p>21 think that's where that 2.7 number comes from,</p> <p>22 which is why mortgage is 2.7 versus the 6.56.</p> <p>23 And again, you can see the 4.5 of</p> <p>24 derivatives is approximately the 4.83, et cetera.</p> <p>25 I don't remember the cash number.</p>
Page 60	Page 61
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 The interesting thing as well on the</p> <p>3 liability side, I'm assuming this is -- because</p> <p>4 this is done as a related date, you can see the</p> <p>5 attrition of the liabilities, that they were</p> <p>6 closed out. You had 35 billion dollars of</p> <p>7 liabilities on the 12th, but on this one, which is</p> <p>8 dated -- is that the date it was produced, 9/16?</p> <p>9 Q. That's what I understand.</p> <p>10 A. I don't know if that number has</p> <p>11 declined.</p> <p>12 Q. I see the correlation you are drawing</p> <p>13 between the two documents --</p> <p>14 A. But I am doing that now.</p> <p>15 Q. That was going to be my question. Did</p> <p>16 you have any participation or understanding or</p> <p>17 knowledge about the process on the 15th and 16th</p> <p>18 by which Exhibit 19 was prepared?</p> <p>19 A. No. Other than my giving numbers on</p> <p>20 request to people at Barclays that must have in</p> <p>21 some way been used to produce this, but we weren't</p> <p>22 involved in the production.</p> <p>23 Q. OK. And so --</p> <p>24 A. Or in the use of it.</p> <p>25 Q. So you're providing your assessments</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 or your data to someone else at Barclays who's</p> <p>3 involved in the discussions with Lehman, correct?</p> <p>4 That's what we talked about earlier?</p> <p>5 A. Yes.</p> <p>6 Q. Do you see on Exhibit 19, you have the</p> <p>7 upper part of the asset side of the sheet, which</p> <p>8 we have just talked about, but below that is</p> <p>9 something called collateralized STAGR? Do you see</p> <p>10 that?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know what that is?</p> <p>13 A. Which one? The one on the left or the</p> <p>14 right?</p> <p>15 Q. On the left, it's -- well, there are</p> <p>16 two entries. On the left there is a</p> <p>17 collateralized STAGR. Do you see that?</p> <p>18 A. Yeah.</p> <p>19 Q. And on the right hand, the liability</p> <p>20 side, it's collateralized ST fund. Do you have an</p> <p>21 understanding of what that is?</p> <p>22 MR. STERN: Objection to the form. If</p> <p>23 you are asking what his general</p> <p>24 understanding is, fine.</p> <p>25 MR. HINE: That's what I am asking.</p>

Page 62

KING - HIGHLY-CONFIDENTIAL

MR. STERN: OK.

A. No. I would -- I would -- I know the word "collateralized." I would guess ST is short term, but I wouldn't know.

Q. Just to understand your role on the 15th and 16th, is it correct to say that you were not involved in providing any kind of assessments relating to something called a collateralized short-term agreement or fund? Is that right?

MR. STERN: Objection to the form.

You can answer.

A. Yeah, no. This -- it is work on the assets behind --

MR. STERN: The second page.

A. The second page of 388-B that we were working on.

Q. I think I just have a glitch in the record here. It is correct to say that you did not have any -- do any work in connection with something called collateralized ST assets, right?

A. No, I don't think so. I don't think so, no.

Q. OK. Now, I have seen in our production several different iterations of

Page 63

KING - HIGHLY-CONFIDENTIAL

Exhibit 19. Have you ever seen any earlier versions of that document that you recall?

A. I don't think so, no.

Q. Do you have any understanding -- do you have any knowledge at the time or any understanding of -- I might have asked this already, I apologize, but the 72.65 number at the bottom, do you have any understanding or knowledge back on the 15th or 16th about discussions between Lehman and Barclays concerning that number?

A. No.

Q. How about a 70 billion dollar number?

A. No.

Q. Just to save use of an exhibit here, in the asset purchase agreement, there is an entry of 70 billion dollars relating to long positions.

A. Right.

Q. Do you have any understanding of that or have you ever heard of that before?

MR. STERN: Objection to the form.

You can answer it.

Q. Let me --

A. No. I mean, as I say, I can -- I know enough about corporate financial structure to know

Page 64

KING - HIGHLY-CONFIDENTIAL

what you are talking about and therefore deduce what you mean, but no, our involvement was to try and assess the value of assets that were feeding into presumably the production of this.

Q. I understand. I'm not trying to get your surmise or conjecture. I am trying to understand if you have any recollection of how a 70 billion dollar number came to be, appear on the asset purchase agreement in connection with Lehman's long positions.

MR. STERN: Is there a question? I don't think there is a question.

Q. Well, what do you -- do you have any recollection of how that came to be?

A. No. As I say, I mean the fact that there are -- whether this number or any other subsequent number or previous number, it doesn't surprise me particularly that there is -- that there are iterations of this, because, as Jasen's e-mail points out, things change, were changing by the minute. But how it was produced and who produced it, that wasn't -- that wasn't for us to provide.

In fact, it doesn't look like any

Page 65

KING - HIGHLY-CONFIDENTIAL

particular -- if there is any relationship between Exhibit 19 and the assets that are described in page 2 of 388-B, then there doesn't seem to be any particular discount or revaluation in them.

So I'm not even sure whether we were -- I don't know whether anything that we were doing was feeding into this page.

Q. The number dropped from 65 billion to 62.7, correct?

MR. STERN: Objection to the form.

A. Well, I don't know whether the number dropped from 62, but I can see that mortgages is reported on this -- one thing I do know is that there was a discussion that only a subset of the mortgage or mortgage-backed securities portfolio, which as I described wasn't just mortgages and mortgage backed, it was asset backs, that not all of them -- we didn't want all of them.

Q. I understand.

A. And so the reason I can at least see for the 2.7 of mortgages is probably that it doesn't include the entire population. So I can see that one, but I don't know -- but I don't really know the transformation from the 62.7 to

Page 66

1 KING - HIGHLY-CONFIDENTIAL  
2 the 65.115, whether they are even based on the  
3 same date, same populations. But I do remember  
4 that fact about the mortgage and mortgage-backed  
5 part.

6 MR. STERN: And that's independent of  
7 Exhibit 19?

8 A. Yes. You can't derive that from --  
9 you can't see that -- I don't remember that from  
10 seeing Exhibit 19 previously, and I'm not deriving  
11 it from that.

12 I am deriving it from a combination of  
13 memory about discussions around that 6 and a half  
14 billion dollars of mortgage and mortgage-backed  
15 securities that are on the 388 page 2, and the  
16 fact that I can see there is only 2.7 billion on  
17 the mortgage line on Exhibit 19.

18 Q. I understand.

19 A. But I don't really -- I don't know  
20 the -- I haven't seen this before, I haven't seen  
21 Exhibit 19 before. At least I don't remember  
22 seeing it. Therefore, I don't remember. It  
23 wouldn't surprise me that 72 and a half or 70  
24 were -- because, as Jasen's e-mail says, things  
25 changed by that day.

Page 68

1 KING - HIGHLY-CONFIDENTIAL  
2 hour and a half. So now we are going to move to  
3 that.

4 So at some point -- so there are --  
5 unfortunately you are asking me about things that  
6 within a day or so were irrelevant to us.

7 Q. "Us" meaning --

8 A. "Us" meaning my group.

9 Q. OK. Well, tell me then why this all  
10 became relevant. I assume you are talking about  
11 in the Wednesday-Thursday time frame?

12 A. Yeah, at the point that we started to  
13 be asked to focus on the securities that were  
14 collateralizing the Fed repo facility.

15 Q. And what were you told in that regard?

16 A. That here is a population of  
17 securities that is collateralizing a loan that was  
18 provided to LBI by the Fed, and we were being --  
19 we, Barclays was being asked to step into the  
20 position of the Fed. I don't know -- I wasn't  
21 part of the discussions as to why that would be  
22 the case or whether it -- or how it had come about  
23 or whether we would do it.

24 My group was then asked once again to  
25 provide an assessment of the probable value or --

Page 67

1 KING - HIGHLY-CONFIDENTIAL  
2 Q. Let's talk about the mortgage-backed  
3 securities for a second. At some point in time it  
4 was agreed that Barclays would only take half of  
5 those securities, correct?

6 A. Yeah.

7 Q. And was it later agreed that they  
8 would take more than that?

9 A. As I say, as I pointed out earlier on,  
10 one of the difficulties here is that all of what  
11 we are discussing, as far as I know, as far as we  
12 were concerned, became irrelevant within hours or  
13 days of the 16th. So the entire discussion about  
14 this by the 17th we had put out of our minds. Or  
15 the 18th.

16 Q. "This" meaning the valuation exercise  
17 you were talking about earlier?

18 A. Yes. Because -- and that's very  
19 challenging -- and we had to prioritize, because  
20 in many respects around this time we were working  
21 literally 24 hours a day. And so the only way to  
22 manage this was to say that's now redundant, I  
23 don't want to discuss it, I don't care about it,  
24 we need to focus on what we need to deliver,  
25 because someone has asked us something within an

Page 69

1 KING - HIGHLY-CONFIDENTIAL  
2 not just even the value actually. What was in the  
3 Fed facility.

4 Q. And who told you -- who told you all  
5 this? Who gave you these instructions?

6 A. The instructions to start to do that  
7 work?

8 Q. Yeah.

9 A. I think, I think it was Mike at the  
10 time asked us to look at it.

11 Q. Mike who?

12 A. Keegan.

13 Q. And did you -- you understand that  
14 there was a repo transaction entered into on  
15 September 18 involving Barclays and Lehman,  
16 correct?

17 A. Yes.

18 Q. That's the Thursday?

19 A. Yes.

20 Q. And so was this assessment you were  
21 asked to do prior to that repo transaction or  
22 was -- were you assessing the securities that had  
23 been posted into that repo transaction?

24 A. Both.

25 Q. So am I correct -- I assume the

Page 70	Page 71
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 securities that were -- supported the Fed repo</p> <p>3 earlier in the week were somehow supposed to make</p> <p>4 their way into the September 18 repo involving</p> <p>5 Barclays and Lehman, correct?</p> <p>6 A. Yes.</p> <p>7 Q. So you were asked to assess both the</p> <p>8 Fed pool of securities and then what ultimately</p> <p>9 made it into the repo?</p> <p>10 A. That's correct, yes.</p> <p>11 Q. And did you come to any conclusions</p> <p>12 after that assessment?</p> <p>13 A. Yes, the same -- we did the same</p> <p>14 process that we had done on each of the previous</p> <p>15 iterations. We were able to reuse some of the</p> <p>16 information because there was an overlap between</p> <p>17 the list of securities that were in the Fed</p> <p>18 facility, ostensibly, the Fed facility and also on</p> <p>19 the balance sheet of LBI.</p> <p>20 We had -- I thought it was on the</p> <p>21 Wednesday, we were -- I thought it was on the</p> <p>22 Wednesday, not the Thursday, we were first asked</p> <p>23 to look at it, which is why I say about the</p> <p>24 Wednesday we started to put our pens down on what</p> <p>25 we were doing previously, and I remember that we</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 had literally something like about an hour or hour</p> <p>3 and a half when we were first asked to look at it</p> <p>4 to -- and the population was 49 or so billion</p> <p>5 dollars of assets, and the question was, Stephen,</p> <p>6 what do you think these are worth?</p> <p>7 Q. That was a population in the Fed repo</p> <p>8 or September 18 repo?</p> <p>9 A. In the Fed -- sorry, is there a</p> <p>10 difference between --</p> <p>11 MR. STERN: I think he is asking if</p> <p>12 you were looking at the Fed portfolio.</p> <p>13 A. Well, we thought -- yes, at this point</p> <p>14 we were on the Wednesday or Thursday prior to the</p> <p>15 funding the night of the 18th, so there was a list</p> <p>16 of -- another list that was sent to us. I can't</p> <p>17 remember where the list came from, whether it was</p> <p>18 a list from the Fed to operations to us. I don't</p> <p>19 remember the information flow. But there was a</p> <p>20 list of securities. We were able to put that list</p> <p>21 of securities, you know, in a spreadsheet, compare</p> <p>22 it to various -- do various look-ups to see</p> <p>23 whether we could find whether we had ever put a</p> <p>24 price on anything that was in the Fed facility.</p> <p>25 Recognizing that during the course of</p>
Page 72	Page 73
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 this week, Lehman had -- Lehman Holdings had</p> <p>3 become bankrupt on the 13th. So almost anything</p> <p>4 that we were saying about valuations was becoming</p> <p>5 redundant each minute because markets were moving</p> <p>6 so much.</p> <p>7 MR. STERN: You said the 13th. Did</p> <p>8 you mean the 15th?</p> <p>9 A. I am sorry, the 15th. I think -- the</p> <p>10 deal stopped happening on the 14th. Right. So</p> <p>11 that week that we are talking about, markets were</p> <p>12 moving tremendously because there was disarray</p> <p>13 because of the bankruptcy.</p> <p>14 Q. There were other events taking place</p> <p>15 at the time as well, correct?</p> <p>16 A. Yes. Also Merrill, so other things</p> <p>17 were going on that meant that, you know, literally</p> <p>18 if you had a portfolio of equities or a portfolio</p> <p>19 of Treasuries or portfolio of hedges or portfolio</p> <p>20 of mortgages, I would say during that week, there</p> <p>21 was no -- I mean the exercise to some extent was</p> <p>22 academic because we are putting a price on</p> <p>23 something for which there was no bid on any of it.</p> <p>24 No bid.</p> <p>25 Q. Well, I think you said previously you</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 were asked -- you mentioned a close to 50 billion</p> <p>3 dollar number.</p> <p>4 A. Yeah.</p> <p>5 Q. I still don't know that you answered.</p> <p>6 Is that the Fed pool or is that the collateral</p> <p>7 that was ultimately posted to the September 18</p> <p>8 repo?</p> <p>9 A. There I am describing what we were</p> <p>10 doing prior to the settlement, which was to</p> <p>11 provide -- the question that had been asked to us</p> <p>12 is, there is a Fed facility, I seem to remember it</p> <p>13 was 45 billion dollars, and it is backed by</p> <p>14 securities which have a value -- which I think</p> <p>15 subsequently or around that time we found was not</p> <p>16 of course -- it is neither a Barclays assessment</p> <p>17 of value or Lehman assessment of value, it is a JP</p> <p>18 as custodian for the securities assessment of</p> <p>19 value. Not a trader's value, so not a mark, just</p> <p>20 a -- you know, a price, a matrix price or wherever</p> <p>21 they got their prices from, assessment of how much</p> <p>22 collateral was supposedly supporting the Fed</p> <p>23 facility, and the Fed facility was sized by</p> <p>24 reference to haircuts to that assumed value.</p> <p>25 So we were then asked to say, well, do</p>

Page 74

1 KING - HIGHLY-CONFIDENTIAL

2 we think that if you had to liquidate this  
3 portfolio, that you could recover the amount of  
4 the loan that was being made.

5 Q. And this is Wednesday night you're  
6 asked this?

7 A. This was I think Wednesday. I  
8 remember it being in the afternoon. And I would  
9 think it was --

10 MR. STERN: And Wednesday was the  
11 17th?

12 A. I feel -- for some reason in my head I  
13 am carrying it around as a Thursday, but I think I  
14 have lost a day in there somewhere because I don't  
15 think I had a night. So --

16 MR. STERN: Just to help, I mean I  
17 don't think there is any dispute about this,  
18 the Fed replacement transaction was executed  
19 on the 18th, into the evening of the 18th,  
20 which is a Thursday. So if that helps you  
21 put things in perspective.

22 A. Yes. In my mind, the time between  
23 when we first were asked to look -- first became  
24 aware of the Fed facility transaction and the  
25 funding of it, was much shorter than a day and a

Page 76

1 KING - HIGHLY-CONFIDENTIAL

2 actually worth 45 billion dollars, and therefore,  
3 should we permit Barclays to lend 45 billion  
4 dollars against a portfolio of securities, and in  
5 any normal circumstances I would never make that  
6 statement or assertion.

7 Q. When you say 45, that's the amount of  
8 the Fed facility?

9 A. That's the amount I remember being the  
10 Fed facility.

11 Q. Secured by -- 45 was the value of the  
12 pool in the Fed, to your recollection, or was that  
13 the amount that the Fed --

14 A. That was the loan amount.

15 Q. And the value or purported value in  
16 the pool was about 5 billion more than that?

17 A. Well, you are using -- you are saying  
18 "value" as if that was value.

19 Q. OK.

20 A. The numbers that were the JP Morgan  
21 marks I think at some date, and I don't remember  
22 which date it was, they may have even been from  
23 the Monday or Tuesday or Wednesday, I don't  
24 remember how current they were. Markets were that  
25 volatile, but that they -- those numbers added up

Page 75

1 KING - HIGHLY-CONFIDENTIAL

2 half. So that may just have been because we  
3 didn't have a night.

4 Q. I appreciate that, for all of us who  
5 have missed nights as well.

6 So is this -- when you said you had  
7 about an hour and a half or two --

8 A. We had an hour and a half. There was  
9 a phone call to say we are being asked to take the  
10 Fed out of this. We didn't know the reason why or  
11 reason for the transaction or whether it was even  
12 necessarily related to it.

13 MR. STERN: "We" being you?

14 A. "We" being Barclays at that point.

15 That Barclays was being asked to take the Fed out  
16 of its facility, out of this loan, and the  
17 question to us as my group was, what do you think  
18 about this value of securities?

19 Q. And what did --

20 A. And I found that an extraordinary  
21 situation, because we had just had the bankruptcy  
22 of Lehman and we were being asked whether or not  
23 we thought a portfolio of securities, which we  
24 barely knew, because we had only really  
25 encountered them a handful of days before, it was

Page 77

1 KING - HIGHLY-CONFIDENTIAL

2 to -- I remember it being anything from 48 and a  
3 half to 49, to 49.7. There was some -- if you add  
4 up those numbers, it would appear that if it were  
5 possible, if it were possible to sell into the  
6 open market at those JP Morgan marks, then you  
7 would get 49 point or 48 point whatever it is for  
8 the portfolio.

9 Of course that's not a -- that's not a  
10 value.

11 Q. OK. But -- I understand that. I  
12 didn't mean to misuse that word.

13 So what did you conclude as to the --  
14 what did you respond to the people who had asked  
15 you to make this assessment?

16 A. We thought it was possible that in a  
17 controlled way, we might be able to recover enough  
18 to cover the loan.

19 Q. Meaning the 45 number?

20 A. Meaning the 45.

21 Q. Now ultimately, that pool of  
22 collateral or a pool of collateral with some  
23 overlap to that gets rolled in -- gets used in  
24 connection with the September 18 repo, correct?

25 A. Yeah.

Page 78

KING - HIGHLY-CONFIDENTIAL

Q. And were you asked to do anything in connection with that pool of collateral?

A. Yes. So now -- so that exercise of assessing the value of, liquidatable value of the securities that were supporting the facility -- the Fed facility was needed to be refined. So we just carried on.

Even though we had given that initial assessment, the reason why I think it fills a very compressed amount of time, we just kept refining and refining and refining our views as we analyzed the portfolio.

Q. Right.

A. As we went into the Thursday -- sorry, Thursday night into the Friday, there was another -- there is another very difficult piece that was in the middle of that, which is operationally how do you settle this transaction and then how do you risk manage it once the trade has come in.

Q. Can you specify "this transaction"?

A. The Fed transaction.

The peculiarity of this, and we didn't really understand this at the beginning, but it

Page 80

KING - HIGHLY-CONFIDENTIAL

collateral for a repo but are effectively going to need to be shadow booked into risk systems so that we can generate appropriate risk metrics so that we can risk manage them. So we -- our process started to change to that.

Q. And this started even before you booked the September 18 --

A. Yes, yes.

Q. -- repo?

A. Yes. Because we had to say how are we going to manage this transaction? How are we going to manage this risk once Barclays has lent -- once Barclays has lent -- in Barclays' book, it is going to have -- the repo desk seems to have lent 45 billion dollars to a counterparty that is going to default, and that is collateralized with a number of securities.

And if it followed its normal process, it would be marking those securities, asking desks, asking price services to -- it wouldn't actually be assuming that it was going to get long the collateral and have to liquidate it.

But here we knew that was going to be the case, and it is mostly the case in other

Page 79

KING - HIGHLY-CONFIDENTIAL

became clear, is, of course, the normal circumstances, a repo transaction shouldn't mean that the lender on the loan is long the underlying risk of the securities collateralizing the loan. They have a secured lending to a borrower that's collateralized.

Here, of course, we knew that we were lending to a borrower that was expected to be bankrupt within a short period of time, and whose parent was bankrupt. Therefore, although it was a loan to a counterparty, at some point we were going to be long the underlying assets.

And if we were long the underlying assets, we therefore needed to risk manage them. Because just because we had assessed that as of the Thursday they were worth some amount, hopefully more than 45 billion dollars, by the Monday, they might have been worth 35 billion dollars.

Q. Right.

A. So we better do something about that. So the focus started to move from how do we manage, how do we even see and book -- how do we book securities that are not just going to be

Page 81

KING - HIGHLY-CONFIDENTIAL

distressed -- it is frequently the case, and we have obviously seen this because of what happened with Bear and Bear's hedge funds that had defaulted on repo-secured lending, that the moment the repo -- the borrower defaults under the repo, you seek to liquidate the collateral, and you invariably don't recover enough to cover the loan. You hope you are going to, but markets are distressed at that moment.

Well, this was the mother of all distress. We are in the middle of a bank, a major bank defaulting that many people had thought wouldn't have been left to default, but had defaulted, and we were about to undertake a 45 billion dollar lending in which we would be long this risk with very limited ways of risk managing it.

Q. So what did you do to risk manage it?

A. Well, so Thursday we had to assess how are we going to record in our books securities, when we haven't actually booked the securities, we booked a repo facility. So we had to construct shadow books that were going to represent the risk of the securities that were in the repo facility,

Page 82

1 KING - HIGHLY-CONFIDENTIAL  
2 and then we sought to insure that -- our plan was  
3 on the Thursday, each of the desks had a list of  
4 the securities that they were expecting to  
5 receive, and we had informed them that of course  
6 repo is -- this was overnight repo. We weren't  
7 but -- a week earlier, by the way, we were not  
8 experts in repo. So some of what I am able to  
9 talk about now about that repo facility, I  
10 actually only learned afterwards.

11 But this was overnight repo, which  
12 meant that strictly speaking the borrower could  
13 switch the collateral within the repo facility  
14 each night. So we had advised the respective  
15 desks, thinking about, you know, in a similar way  
16 we categorized the assets that were in the repo  
17 facility in a similar way to the way they are  
18 categorized on 388-B, and we passed those out to  
19 the relevant desks and said tomorrow, you are  
20 going to be -- we need you to help us manage this  
21 exposure.

22 And we sent lists to each of the  
23 desks. Of course -- but we told them they may  
24 marginally change overnight, and until we are  
25 certainly long the risk, we can't hedge. We

Page 84

1 KING - HIGHLY-CONFIDENTIAL  
2 replace the Fed, thereby knowing for certain that  
3 it had a secured loan out to Lehman, LBI, where  
4 LBI was expected to default.

5 So it is not until for certain that  
6 Barclays has funded that loan that it could say  
7 that it definitely is long the risk of the  
8 underlying securities.

9 Q. OK. So if --

10 A. So for example -- maybe it is easiest  
11 by example. If we took a single security on the  
12 Thursday, in normal trading, in a normal trading  
13 environment, I might be negotiating with a  
14 counterparty to buy something and I might be  
15 agreeing the price and we might be trading, but --  
16 and I might know that the moment that I want to --  
17 moment that I know I am going to be long the  
18 security, I will need to hedge, and I have worked  
19 out how I am going to hedge, but until the trader  
20 tells me done, not just at some point while we are  
21 discussing the price, if I decide to hedge before  
22 he says done and then he says, you know what,  
23 change my mind, now I have put a hedge on against  
24 nothing and I have got to take the hedge off.

25 So until we know that this repo

Page 83

1 KING - HIGHLY-CONFIDENTIAL  
2 couldn't hedge prior because of course if for some  
3 reason the transaction hadn't settled, we would be  
4 short the market, so there was no way to hedge  
5 until we knew that we actually were long the risk.

6 Q. OK then. There was a lot there, so  
7 let me ask a couple of questions.

8 When you say we were certain we were  
9 long the risk, that would be when there was a  
10 default?

11 A. No. Once the securities had settled  
12 into Barclays.

13 Q. Oh.

14 A. Which would have been the Thursday  
15 night, Friday morning.

16 MR. STERN: You might just explain  
17 what you mean when you talk about long the  
18 risk and so on.

19 A. On Thursday, there was -- we knew that  
20 there was a Fed facility. Barclays had not lent  
21 any money to Lehman. The Fed had lent money to  
22 Lehman and collateralized that lending with  
23 securities.

24 Q. Right.

25 A. That night, Barclays would effectively

Page 85

1 KING - HIGHLY-CONFIDENTIAL  
2 transaction -- this replacement repo transaction  
3 has settled, it would be -- it was a trading  
4 decision whether or not we should hedge before it  
5 settles or after it settles. And we elected to  
6 start hedging after it settled.

7 Q. So when you say settles, that's on  
8 Thursday, the 18th?

9 A. Thursday night into Friday morning.

10 Q. So that -- OK, I think I understand  
11 that.

12 But aren't you -- I guess I didn't  
13 understand the shadow book concept. I thought you  
14 weren't long the security until LBI defaults on  
15 the Friday.

16 A. Formally -- exactly right. Until the  
17 Friday when there is the default of LBI, then the  
18 systems would record a secured lending facility.  
19 As I say, some of this, you know, back filling the  
20 knowledge because we learned how it really would  
21 happen after the fact.

22 Q. Sure.

23 A. But that there would be a loan and the  
24 repo desk would say, I have got a loan out to LBI  
25 and it is collateralized by the following

Page 86

1 KING - HIGHLY-CONFIDENTIAL  
2 securities, but it isn't equipped to hedge or  
3 manage those underlying securities because it is  
4 not expecting to ever need to. It thinks it has  
5 got an overcollateralized loan.

6 Q. Right.

7 A. Where it hopes -- where a repo desk  
8 risk management ought to be, I've lent you money,  
9 I have got some additional margin over and above  
10 the amount of money that you have lent, that I  
11 have lent you, and if you default, I am going to  
12 sell it all as quickly as possible. I am not  
13 going to reflect on it and think about whether I  
14 would like to -- those are trading decisions for  
15 someone else. I am going to sell it.

16 And hence, when you try to sell  
17 something in that way, you would invariably,  
18 regardless of whether the last trade observed in  
19 the market was 95, if you phone up somebody and  
20 say I need a bid, you might get a 85, and that's  
21 why they need the margin. But that would be their  
22 normal repo risk management decision.

23 Here we were going into this lending  
24 with the benefit of knowledge that within 24 hours  
25 to 48 hours, it would be the case that this

Page 88

1 KING - HIGHLY-CONFIDENTIAL  
2 index does this portfolio look like.

3 Because we can't know -- we know there  
4 is no way we can sell. If we go out and start  
5 selling at 8 a.m. on the Friday morning, five days  
6 after the bankruptcy of Lehman, we would  
7 recover -- I don't know what we would recover.

8 And we already knew that where we had  
9 seen some of the bids in the market during that  
10 week where other people have been selling -- bear  
11 in mind, the market was flooded with collateral  
12 from the bankrupt Lehman Brothers Holding and  
13 LBIE, so that people were closing out other repo  
14 facilities. So the market was full of Barclays --  
15 of Lehman's securities that were already being  
16 sold. So -- and we were about to get long another  
17 45 billion dollars of them.

18 So there would be no way for us to  
19 manage that. The only way we could do it was  
20 bring the risk on to our systems, assess how  
21 volatile it was going to be and what parts of that  
22 volatility we would have to hedge with instruments  
23 in more liquid markets. For example, S&P. For  
24 example, interest rate derivatives.

25 And that's what we started to do on

Page 87

1 KING - HIGHLY-CONFIDENTIAL  
2 borrower would default, so that there was no value  
3 to the counterparty, and furthermore, we were  
4 therefore going to be long a humongous number of  
5 securities that we would have no ability to sell.

6 Q. So for that reason you start risk  
7 managing those securities the minute the repo  
8 settles?

9 A. First we say -- many of these  
10 securities have -- so the -- maybe again it is  
11 worth just touching on this for a second.

12 When I talk about risk, what I mean is  
13 that what is the expected change in value of a  
14 security with respect to a change in something  
15 else. So many of the securities have interest  
16 rate sensitivity.

17 Q. Right.

18 A. How much would the value of these  
19 bonds change if the interest rates went up.

20 Q. OK.

21 A. We would also come up with some crude  
22 estimates for, say, the equities portfolio, which  
23 would be how much of the S&P 500 does this equity  
24 portfolio look like. For the RMBS securities we  
25 might say how much of a particular mortgage-backed

Page 89

1 KING - HIGHLY-CONFIDENTIAL

2 the Thursday in anticipation, what systems are we  
3 going to need to help manage that and what are we  
4 going to do on the Friday. Of course, that was  
5 complicated, further complicated by the fact on  
6 the Friday morning we woke up to discover we don't  
7 own the same portfolio we thought we were going to  
8 own a day earlier.

9 Q. OK. Let me put that issue aside for a  
10 minute here. I think I followed you. It is an  
11 area that I am not familiar with, so I apologize.

12 So on Thursday, you are risk managing  
13 or hedging the volatility that you foresee in that  
14 pool of securities as a result of all this market  
15 activity that you have seen? The plan was to  
16 hedge the portion you needed to hedge and then  
17 sell the securities later?

18 A. Yeah. So I think the answer to your  
19 question is actually no, we were not hedging on  
20 the Thursday. We were starting to work out  
21 that -- the process up to the decision of will  
22 Barclays lend against this pool of assets was one  
23 that would incorporate both an assessment of  
24 Barclays' assessment, not JP's assessment or  
25 Lehman's assessment or anybody else, but Barclays'



Page 90	Page 91
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 traders' assessment of what was the realizable</p> <p>3 value of the securities and the amount of -- it</p> <p>4 would need to have some amount of cushion over and</p> <p>5 above the amount that it would lend, because the</p> <p>6 moment that it started to sell, Barclays itself</p> <p>7 would drive the market down.</p> <p>8 Q. Right, right.</p> <p>9 A. So we needed to do two things on</p> <p>10 Wednesday and Thursday. One, an assessment of an</p> <p>11 estimate of what we thought was a reasonable</p> <p>12 liquidation value for the portfolio, and then,</p> <p>13 two, what was a reasonable guess at the risks that</p> <p>14 we were taking by being long that portfolio.</p> <p>15 That's what we were doing Thursday.</p> <p>16 On Friday then --</p> <p>17 MR. STERN: "That portfolio" is the</p> <p>18 Fed portfolio?</p> <p>19 A. For the portfolio we thought we were</p> <p>20 going to take delivery of, or best guess of the</p> <p>21 portfolio we thought we were going to take</p> <p>22 delivery of on the Friday.</p> <p>23 But it wasn't until -- and then we</p> <p>24 made a decision not to hedge on the Thursday. And</p> <p>25 then on the Friday, once we knew the transaction</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 had been consummated, so we knew that we were</p> <p>3 actually long --</p> <p>4 Q. That's Thursday night, Friday morning?</p> <p>5 A. So some point Thursday night, somebody</p> <p>6 would have phoned me and said, Stephen, we are</p> <p>7 long. So then we knew we had eliminated one risk,</p> <p>8 which was the execution risk.</p> <p>9 Q. Right, right.</p> <p>10 A. Because we couldn't -- the reason for</p> <p>11 not hedging was we could never manage -- never</p> <p>12 hedge the execution risk.</p> <p>13 Q. Right.</p> <p>14 A. But on Friday we now know we are long.</p> <p>15 Let's say that was at 2 o'clock in the morning or</p> <p>16 something. No markets are open, so there is no</p> <p>17 way to start selling or to manage -- actually we</p> <p>18 couldn't start selling because actually it is just</p> <p>19 a repo facility, it is not that we are long the</p> <p>20 assets, so you couldn't sell on the Friday.</p> <p>21 So therefore, we would have to think</p> <p>22 up things we could use to hedge the risk. And</p> <p>23 that's -- we started that process on Thursday. By</p> <p>24 Friday we started to realize there are securities</p> <p>25 that we thought we were going to take delivery of</p>
Page 92	Page 93
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 that we haven't, and there were securities that we</p> <p>3 have never seen before.</p> <p>4 Q. What happens when you -- is that early</p> <p>5 in the morning Friday?</p> <p>6 A. We started to be aware of that early</p> <p>7 in the morning Friday.</p> <p>8 Q. So take me through what happens. I</p> <p>9 assume you take that to someone's attention?</p> <p>10 A. Yes.</p> <p>11 Q. What happens in that regard?</p> <p>12 A. They say what -- so what do you want</p> <p>13 to do, Stephen, and we start the process again,</p> <p>14 which is OK, we have got a list of securities, do</p> <p>15 we have a complete population -- bear in mind --</p> <p>16 the reality is, this was -- there was a tremendous</p> <p>17 number of people that were involved in this,</p> <p>18 because this was a -- you know, it had to be a</p> <p>19 very sensibly and carefully risk managed process.</p> <p>20 We couldn't eliminate the uncertainty associated</p> <p>21 with prices, but we ought to be eliminating the</p> <p>22 uncertainty associated with how we managed the</p> <p>23 process.</p> <p>24 So a lot of people involved, but the</p> <p>25 Friday morning therefore we just started to do</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 again what we had done the day before, how many of</p> <p>3 the securities do we know? Do we have a complete</p> <p>4 population? How do we categorize the securities</p> <p>5 that we haven't seen before, what are they, and</p> <p>6 actually less what do we think they are worth at</p> <p>7 that point, because it doesn't matter. More what</p> <p>8 matters is what are they and how do we manage</p> <p>9 them, and that's what we did on the Friday.</p> <p>10 Q. Can I ask you a question. I think --</p> <p>11 tell me if I am wrong. I understood that there</p> <p>12 was some kind of glitch in transferring the Fed</p> <p>13 pool of securities to the repo to the tune of</p> <p>14 about 7 billion dollars, and that Lehman, to make</p> <p>15 up that shortfall, took a loan and put it into the</p> <p>16 repo. Is that your understanding?</p> <p>17 MR. STERN: Objection to the form.</p> <p>18 A. All I know is -- I reiterate the role</p> <p>19 that we were playing. The role that we were</p> <p>20 playing is we are not operations people. We are</p> <p>21 traders and risk managers. Our job was to assess</p> <p>22 value and then manage the multitude of risks</p> <p>23 associated with the acquisition of the assets.</p> <p>24 I know by construction that there were</p> <p>25 differences between what we thought we were going</p>

Page 94

1 KING - HIGHLY-CONFIDENTIAL  
2 to be risk managing on the Thursday and what we  
3 were actually risk managing on the Friday, and I  
4 know that that is -- that there was 7 billion  
5 dollars of supposed value, and I think they were  
6 using -- I don't know what marks they were using,  
7 but 7 billion dollars that had been substituted  
8 for cash, which therefore cash doesn't -- nice  
9 thing about cash, you don't have to risk manage  
10 it, or at least we didn't think so.

11 Q. I would assume so.

12 MR. STERN: Turns out you did.

13 A. Turns out we did. Cash is supposed to  
14 be cash.

15 And then in addition to that -- so  
16 there was a -- there were less secure -- rather  
17 than -- and I'm using these numbers just to try to  
18 indicate population as opposed to the accuracy of  
19 the numbers.

20 So that we had anticipated that at JP  
21 marks, that there was a population that JP  
22 assessed as being worth 49.7 of securities, that  
23 actually that was 42.7. Therefore -- and there  
24 was 7 billion of cash.

25 In addition, though, within the

Page 95

1 KING - HIGHLY-CONFIDENTIAL  
2 securities, they were not the same population. So  
3 it wasn't even that it was just a subset of the  
4 original population, the Thursday population, it  
5 was a subset of the original population plus about  
6 10 billion dollars of stuff that we had never seen  
7 before.

8 Q. That's where I was leading with the  
9 question. In other words, the difference that you  
10 saw between what you expected and what you  
11 received is both in the size of the pool as well  
12 as the composition of part of the pool?

13 A. Correct. There was approximately --  
14 again I am using these numbers, using -- by  
15 reference to the JP marks, not my assessment of  
16 value or what we were ultimately able to sell them  
17 for. There was something like 49 -- we thought  
18 that there was going to be something like 49, a  
19 population that JP would mark at 49.7. There  
20 actually was only about 32 billion dollars of that  
21 population was delivered.

22 Then there was 7 billion of cash or  
23 cash that -- you know, cash was cash, and then  
24 there was 10 billion dollars, and now -- for which  
25 we didn't have any equivalent JP valuations, but

Page 96

1 KING - HIGHLY-CONFIDENTIAL  
2 that once they arrived at BoNY, which was our  
3 custodian, BoNY assessed as having marks in total  
4 of about 10 billion dollars, and that portfolio we  
5 had not seen before.

6 Q. What did you do with respect to that  
7 portfolio and the BoNY ones?

8 A. The exact same as we had done with all  
9 the preceding lists of securities. We tried to  
10 assess had we got the entire population.

11 Bear in mind, the reason we do that,  
12 there is no point in risk managing something if it  
13 isn't what you actually own. So it has to start  
14 with do I really own this. We spent a tremendous  
15 amount of time focusing on do I have this, is this  
16 a population, categorizing the population, because  
17 now all we have got is a list of CUSIPs, so you  
18 have to get from CUSIPs to a description of the  
19 asset by name, by asset type, then to break it out  
20 into asset types, and then to assess what we think  
21 its risk is and what its value ought to be.

22 Q. And so that's a process you started  
23 with respect to this 10 billion dollars --

24 A. On that Friday morning.

25 Q. -- on that Friday. Did you come to a

Page 97

1 KING - HIGHLY-CONFIDENTIAL  
2 conclusion on that Friday or when?

3 A. I think one thing that's also worth  
4 pointing out, the idea of a conclusion suggests  
5 finality. We had -- and I don't think we -- the  
6 conclusion probably should be the date on which  
7 ultimately it was sold, and stuff took a year to  
8 sell.

9 On that Friday, yes, we did start to  
10 think that we had a list of all the securities  
11 that were delivered. That took time. And we  
12 started to estimate our own -- you know, Barclays'  
13 trading desk values for them in -- you know, in  
14 the environment that we were in, and the risk.

15 Q. And did you come to any interim  
16 assessments on that Friday?

17 A. Yes, yes.

18 Q. What did you assess on that Friday?

19 A. In relation to -- I don't really  
20 remember too much on that Friday about the  
21 valuations, because we were very focused on the  
22 risk.

23 Q. OK. Would you have the same answer if  
24 I said over the weekend?

25 A. Yeah. I mean over -- no, over the

Page 98

1 KING - HIGHLY-CONFIDENTIAL  
2 weekend, then it started to change. The -- we  
3 were, you know, reassess -- we -- between there  
4 and the end of the year, end of the financial  
5 year, we were constantly reassessing what we  
6 thought was the value of the securities.

7 So you're right, over the weekend we  
8 started to revert back to what do we think the --  
9 what number are we going to use as a -- when  
10 management is asking me, well, Stephen, what did  
11 we take delivery of, they would like an answer and  
12 they would like it now, not a better answer in  
13 three weeks' time. So we had to come up with  
14 something. But that was a crude response.

15 And in some respects it didn't really  
16 matter to what we were doing, "we" being my desk,  
17 because what really mattered is, do we have the  
18 population and what is the risk of it.

19 I know that obviously some of the  
20 valuation work we were doing would then be feeding  
21 back into the negotiations that other parties were  
22 having about a deal with Lehman, but it actually  
23 wasn't very germane to what we ourselves were  
24 doing.

25 Q. I think I understand that.

Page 99

1 KING - HIGHLY-CONFIDENTIAL

2 You have mentioned two different --  
3 this is Friday now. You mentioned two different  
4 sets. One is 32 billion dollars worth of  
5 securities which had JP marks on them, and the  
6 other is this 10 billion dollars of securities  
7 that you had never seen before which had BoNY  
8 marks on them.

9 A. BoNY marks on it.

10 Q. Is this assessment that you are doing  
11 over that weekend primarily focused on the 10  
12 billion dollar pool?

13 A. No, everything.

14 Q. Are you coming to some interim  
15 conclusions during that weekend about the marks?

16 A. Yes.

17 Q. And what are you finding out that  
18 weekend?

19 A. I don't really -- the one thing that I  
20 remember is saying that I felt that the cumulative  
21 amount of securities and cash that we had received  
22 in an orderly disposal, in not just a fire sale,  
23 we couldn't just sell -- we couldn't say let's  
24 sell these over the weekend and then we are done  
25 by Monday.

Page 100

1 KING - HIGHLY-CONFIDENTIAL

2 The -- there was -- the loan was  
3 adequately collateralized. And that I remember.

4 Q. And you told that to your supervisors  
5 or whoever was asking?

6 A. Yes, yeah, yeah. And then on the  
7 Friday we started to hedge.

8 Q. You started to hedge both the 32  
9 billion pool and the 10 billion?

10 A. We didn't differentiate. We really  
11 didn't start talking too much about what we had  
12 received. Much of the discussion about what we  
13 had received versus hadn't received really didn't  
14 go on until later on.

15 We only really cared about what  
16 would -- you know, the cumulative amount of what  
17 we had received.

18 Q. Later on meaning after the weekend?

19 A. Yeah, weeks later.

20 Q. So did you have any discussions over  
21 that weekend with Lehman or did anyone from  
22 Barclays have discussions with Lehman as to, in  
23 words or substance, hey, how come we got  
24 10 billion dollars of securities we weren't  
25 expecting?

Page 101

1 KING - HIGHLY-CONFIDENTIAL

2 A. I know there were discussions, both  
3 with JP and Lehman. We weren't -- my desk weren't  
4 part of those discussions.

5 Q. All right. Do you have any  
6 understanding of what happened in those  
7 discussions?

8 A. In relation to what?

9 Q. Well, do you have any -- someone from  
10 Barclays said words to that effect to Lehman,  
11 right?

12 A. Or to JP. I don't know -- the deck  
13 securities had come from JP. So why -- so -- all  
14 we cared about, why have we not got the same  
15 population that the Fed thought it had the night  
16 before?

17 Q. You are comparing what you got on  
18 Thursday night and Friday to the population that  
19 you had spreadsheets about what was previously  
20 comprised of the Fed pool?

21 A. Yes.

22 Q. And there was a difference in about  
23 10 billion dollars worth of those securities?

24 A. 17 or so billion, because there is  
25 some missing, 7, and then the 10, and using those

Page 102	Page 103
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 JP or combination of JP and BoNY numbers. But we</p> <p>3 weren't ever part of the conversations about what</p> <p>4 had happened and why it had happened.</p> <p>5 Q. OK. Just so I am clear, you had a</p> <p>6 pool of some close to 50 billion dollars of marked</p> <p>7 securities for the Fed. What you get on Thursday</p> <p>8 night or Friday is about 7 billion in cash,</p> <p>9 32 billion with -- that had been in that pool, and</p> <p>10 about 10 billion of new securities; is that right?</p> <p>11 Am I understanding the groups now?</p> <p>12 MR. STERN: Can I hear the question,</p> <p>13 the question back.</p> <p>14 MR. HINE: Let me try again. It was a</p> <p>15 long convoluted question.</p> <p>16 Q. You previously had a list or some kind</p> <p>17 of data that showed about 50 billion dollars worth</p> <p>18 of assets in the Fed pool, correct?</p> <p>19 MR. STERN: Objection to the form.</p> <p>20 A. Well, the -- we had a population of</p> <p>21 securities which we were expecting to take</p> <p>22 delivery of which we understood was supporting a</p> <p>23 Fed facility.</p> <p>24 Q. And that -- I'm just trying to -- I am</p> <p>25 drawing a Venn diagram in my head. I want to see</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 how what you expected to be in the Fed facility</p> <p>3 compared to what you ultimately received.</p> <p>4 A. Right.</p> <p>5 Q. As I understand your testimony, tell</p> <p>6 me if I am wrong, it is about 32 billion dollars</p> <p>7 of what you ultimately did receive had previously</p> <p>8 been in the Fed facility, to your understanding;</p> <p>9 is that right?</p> <p>10 MR. STERN: Objection to the form.</p> <p>11 A. Unfortunately what we are having to do</p> <p>12 is to use -- because we couldn't -- when we are</p> <p>13 talking about the population, we can't describe --</p> <p>14 between you and I, we can't discuss CUSIPs and we</p> <p>15 can't discuss asset types, so we are ending up</p> <p>16 using JP Morgan numbers to describe populations.</p> <p>17 So I'm just being a little bit</p> <p>18 cautious about the fact when you say 32 billion,</p> <p>19 that 32 billion dollars is just the sum of the JP</p> <p>20 Morgan marks at a particular time.</p> <p>21 Q. Right, right.</p> <p>22 A. That was probably a different time to</p> <p>23 the time of the 49 billion dollars worth of</p> <p>24 JP Morgan prices on securities that we thought to</p> <p>25 take delivery of. So I am just being particular</p>
Page 104	Page 105
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 about that.</p> <p>3 Are we saying that they are of a</p> <p>4 population that JP Morgan at some point had marked</p> <p>5 at 49.7, I seem to remember, did we take delivery</p> <p>6 of a subset of that, using your Venn diagram, that</p> <p>7 JP Morgan had assessed at about the time of the</p> <p>8 settlement as 32 billion dollars, yes.</p> <p>9 Q. And in addition, you took delivery of</p> <p>10 a pool that BoNY had assessed at about 10 billion</p> <p>11 dollars of new securities that were not part of</p> <p>12 the Fed pool?</p> <p>13 A. Yes, yeah.</p> <p>14 MR. STERN: Objection to the form.</p> <p>15 Can I hear the question again.</p> <p>16 (Record read)</p> <p>17 MR. STERN: You can answer that.</p> <p>18 A. Yeah, I think that's right. I also</p> <p>19 don't know -- when I come to think about it, I</p> <p>20 don't even know whether the 32 -- I think the 32</p> <p>21 that you are referring to probably was -- we had a</p> <p>22 list of securities that from a number of days</p> <p>23 before we had JP Morgan's -- bear in mind, the</p> <p>24 moment that the securities moved from JP as</p> <p>25 custodian to BoNY as custodian, they are not</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 then -- the availability of the marks by the</p> <p>3 previous custodian at that moment are not</p> <p>4 available.</p> <p>5 So it may be even that the 32 billion</p> <p>6 dollars is actually BoNY as opposed to the</p> <p>7 original JP. I think it was the mark -- it was</p> <p>8 the sum of the marks that JP had put on the</p> <p>9 portfolio the last time JP had provided it.</p> <p>10 Q. OK.</p> <p>11 A. Then there was a population of</p> <p>12 securities which then BoNY provided, because BoNY</p> <p>13 provided custodial marks. We actually used to</p> <p>14 call them custodial, although that's a desk</p> <p>15 colloquial term. The custodial marks provided by</p> <p>16 BoNY on the population we hadn't seen before was</p> <p>17 approximately 10 billion dollars.</p> <p>18 (Exhibit 389-B, document Bates stamped</p> <p>19 BCI-EX-S 75200 through 201 marked for</p> <p>20 identification, as of this date.)</p> <p>21 Q. Mr. King, handing you a copy of a</p> <p>22 document marked as Exhibit 389-B, which is Bates</p> <p>23 stamped BCI-EX-S 00075200 through 201. Please</p> <p>24 take a minute, and I will have a few questions</p> <p>25 about this.</p>

Page 106	Page 107
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Have you had a chance to look at that?</p> <p>3 A. Yes.</p> <p>4 Q. The title of this e-mail is "Barclays'</p> <p>5 team/teams on their way over to meet with us on</p> <p>6 our positions and marks, obviously critical."</p> <p>7 Do you see that?</p> <p>8 A. Yeah.</p> <p>9 Q. Was there a meeting that took place on</p> <p>10 Friday between Lehman and Barclays about this</p> <p>11 issue?</p> <p>12 A. There were -- not with us. Not with</p> <p>13 my group. Although David Martin was part -- I had</p> <p>14 actually forgotten that David Martin -- formally</p> <p>15 at this point I worked for David Martin, who</p> <p>16 worked with Eric. David Martin is not with the</p> <p>17 firm. David Martin hadn't really been involved in</p> <p>18 anything to do -- or hadn't been involved in</p> <p>19 anything to do with this Lehman acquisition.</p> <p>20 So that's David's involvement.</p> <p>21 On the Friday, as I recollect, because</p> <p>22 the repo facility had now settled, that seemed to</p> <p>23 indicate a consummation of an ultimate transaction</p> <p>24 whereby there would be something happening between</p> <p>25 Lehman and Barclays. And so various desks, the</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 flow desks, the other trading desks did start to</p> <p>3 have dialog with their counterparties at Lehman</p> <p>4 about stuff. But not with -- not with us.</p> <p>5 Now, David here -- so that wasn't --</p> <p>6 the answer is, there were meetings, but I don't</p> <p>7 know much about the meetings.</p> <p>8 Q. Did you participate in any meetings on</p> <p>9 that Friday?</p> <p>10 A. I don't think so. I don't think so.</p> <p>11 I mean I have met -- I've met Charlie Spero maybe</p> <p>12 twice throughout the whole process. I think I met</p> <p>13 Eric Felder once before the 12th. That's</p> <p>14 literally the extent of the discussions.</p> <p>15 There were various telephone</p> <p>16 conversations between Jasen and -- at various</p> <p>17 times to try to identify what particular</p> <p>18 securities were, because we had no idea what they</p> <p>19 were. They just had a CUSIP, and then it would</p> <p>20 say fixed income instrument. So we had to help</p> <p>21 find out what they were, but it was very limited.</p> <p>22 Q. That's Mr. Yang?</p> <p>23 A. That's Jasen Yang, yes.</p> <p>24 Q. Charlie Spero is your counterpart at</p> <p>25 the former Lehman?</p>
Page 108	Page 109
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. He wasn't my counterpart. He was a</p> <p>3 trader that ran the mortgage desk at Lehman.</p> <p>4 Q. So, but you didn't participate in any</p> <p>5 meetings on this Friday about positions and marks?</p> <p>6 Is that right?</p> <p>7 A. No, I didn't, no.</p> <p>8 Q. Do you know -- do you have any</p> <p>9 understanding about what happened during those</p> <p>10 meetings?</p> <p>11 A. So this is on -- this is 2:58 on the</p> <p>12 Friday.</p> <p>13 Q. That's Greenwich time, right?</p> <p>14 A. That's Greenwich, so that makes much</p> <p>15 more sense. So 2:58. So this is midmorning on</p> <p>16 Friday, when we would be realizing that we haven't</p> <p>17 got what we thought we were going to take delivery</p> <p>18 of.</p> <p>19 And if you read the top sentence,</p> <p>20 David's response to me, when I say, "I assume you</p> <p>21 are talking to Kaushik," Kaushik was the -- so</p> <p>22 David, David Martin, I'd asked David to look at</p> <p>23 the agency mortgage pool, agency mortgage security</p> <p>24 pool, because we do trade those. I asked David to</p> <p>25 look at those within the population -- that had</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 ultimately been delivered on the Friday morning.</p> <p>3 And what this e-mail highlights, and</p> <p>4 as I say, I think it is one of a variety of things</p> <p>5 he said, is an effort on the Friday morning, it</p> <p>6 wasn't altogether coordinated, to determine what</p> <p>7 we had got. Because the first sentence says, "I</p> <p>8 have called the derivative and CNO guys." By</p> <p>9 that, he means the agency mortgage and derivative</p> <p>10 traders.</p> <p>11 "Derivative guys said a lot of</p> <p>12 positions did indeed look like repo ones in the</p> <p>13 file I sent." So there has been a file that we</p> <p>14 have created, the securities which we have taken</p> <p>15 delivery of on Friday that we had never seen</p> <p>16 before, that I have sent to David, that David has</p> <p>17 sent over to a counterparty at Lehman. And the</p> <p>18 first paragraph highlights that we are just in the</p> <p>19 process of trying to work out what we have got and</p> <p>20 has anybody seen them before.</p> <p>21 Q. What does he mean in the first</p> <p>22 paragraph where it says, "told him to mark them</p> <p>23 consistent with his inventory. Appeared he got</p> <p>24 the message from above to remark positions."</p> <p>25 Do you have any understanding of what</p>

Page 110	Page 111
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 that means?</p> <p>3 A. Right. So I'm not sure where this --</p> <p>4 this may have actually -- I think -- there were</p> <p>5 two -- you mentioned that there were -- there</p> <p>6 was -- there is sort of multiple tracks that may</p> <p>7 have been going on simultaneously here. We</p> <p>8 were -- my desk was focused on what assets do we</p> <p>9 have, what do we think we can recover from them,</p> <p>10 in valuation, you know, in liquidation valuation,</p> <p>11 and how do we risk manage them.</p> <p>12 There also was a formal process of how</p> <p>13 do we and how do Barclays and Lehman mark the</p> <p>14 books and records, the securities.</p> <p>15 I don't even know whether this was</p> <p>16 something that was Lehman asking Lehman people to</p> <p>17 mark their securities or Barclays asking Lehman</p> <p>18 people to mark their securities or for what</p> <p>19 purpose it was.</p> <p>20 Bear in mind, traders were supposed to</p> <p>21 still be sitting in their seats of a nonbankrupt</p> <p>22 entity on the Friday marking their books. They</p> <p>23 still had a -- they worked for a broker dealer.</p> <p>24 They have long risk positions. They have an</p> <p>25 obligation to mark every day.</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. Well, Lehman, LBI declared bankruptcy</p> <p>3 on that Friday, right?</p> <p>4 A. Maybe that was it. Was it on the</p> <p>5 Friday?</p> <p>6 MR. STERN: The 19th?</p> <p>7 A. OK. I don't know. Maybe that was on</p> <p>8 the Thursday -- I don't know the timing of this</p> <p>9 particularly, but the -- presumably there was -- I</p> <p>10 could see that they -- the traders had to mark</p> <p>11 certain things.</p> <p>12 I think this, David's involvement here</p> <p>13 is because we would like to have a mark on what we</p> <p>14 have just taken delivery of, because all we have</p> <p>15 got is a list of securities, and what was clear,</p> <p>16 it is not clear from this e-mail, is that some of</p> <p>17 the securities at the BoNY marks were atrociously</p> <p>18 mismarked. So you need a trader.</p> <p>19 Most price testing functions work</p> <p>20 extremely hard. Price testing functions meaning</p> <p>21 groups. We have a price testing group within</p> <p>22 Barclays. There is a price testing group within</p> <p>23 Lehman. BoNY and JP as custodians need to try to</p> <p>24 come up with prices for thousands and thousands</p> <p>25 and thousands of securities every day. So they</p>
Page 112	Page 113
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 have to do it in some kind of batch way. So they</p> <p>3 come up with heuristics by which they mark things,</p> <p>4 because otherwise how could you do it?</p> <p>5 But that's not the same as where a</p> <p>6 trader on a minute, who sat in his seat, talks to</p> <p>7 other traders and says, I would be willing to</p> <p>8 trade. It is supposed to be a pretty good guess,</p> <p>9 but it is never perfect.</p> <p>10 And in between the bankruptcy of LBH</p> <p>11 and bankruptcy of LBI, it was -- you know, it</p> <p>12 is -- the tracking error of that kind of approach</p> <p>13 is bound to be big. So as soon as we have taken</p> <p>14 delivery, it is great -- at least we have got</p> <p>15 BoNY's assessment of where they thought they would</p> <p>16 be willing to advance against -- bear in mind, the</p> <p>17 other thing about the BoNY and JP marks is that</p> <p>18 the Fed was using -- what the Fed does when it</p> <p>19 takes those marks is -- I can't remember the</p> <p>20 advance rates. I learned them later on.</p> <p>21 But when the Fed lends, if you looked,</p> <p>22 went to the Fed's website and looked at the</p> <p>23 advance rates of the securities, what it does is,</p> <p>24 it says, we will assess a value of security at</p> <p>25 some mark that the custodian has provided us, and</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 then we will advance less than that as the loan.</p> <p>3 So for example, for mortgage-backed</p> <p>4 securities that might only be 50 percent of the</p> <p>5 supposed mark. So they are not as worried, and in</p> <p>6 normal market conditions that's supposed to be</p> <p>7 fine. They are not actually as worried that they</p> <p>8 have got the mark perfect, because they are only</p> <p>9 lending 50 cents on the dollar, or on equities,</p> <p>10 for example, I think they lend 90 cents on the</p> <p>11 dollar. For agencies maybe they lend 80 cents on</p> <p>12 the dollar.</p> <p>13 So they are saying, I think I have got</p> <p>14 this, I know statistically I must have some error</p> <p>15 on it, but I am only lending 80. Whereas the</p> <p>16 trader when he trades, he is trading there, and he</p> <p>17 is exposed to the first dollar of mispricing, not</p> <p>18 the dollar after the haircut. So they have very</p> <p>19 different tolerances for error.</p> <p>20 So this, on that Friday morning what I</p> <p>21 asked David to do, let's see if we can get an</p> <p>22 assessment as quickly as possible of the -- what</p> <p>23 the things we haven't seen before are worth, and</p> <p>24 it may have been, I don't remember, also the</p> <p>25 stuff, what we long today, worth today, not</p>

Page 114	Page 115
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 yesterday, because that also is different.</p> <p>3 And what he is highlighting is that</p> <p>4 there are -- in the first paragraph he highlights</p> <p>5 that of course the Lehman guys hadn't actually got</p> <p>6 in their inventory the list of securities that</p> <p>7 were part of the repo. Because of the</p> <p>8 intercreditor relationships between the various</p> <p>9 Lehman Brothers entities, it wasn't necessarily</p> <p>10 the case that everything that was in the repo</p> <p>11 facility was also on the Lehman balance sheet,</p> <p>12 Lehman Brothers, LBI balance sheet.</p> <p>13 And in the second paragraph it also</p> <p>14 has -- there must have been a separate</p> <p>15 conversation going on. There is a typo in there,</p> <p>16 actually, but it says, "an orderly liquidation</p> <p>17 mark." Notice the use of the term "orderly</p> <p>18 liquidation mark," not liquidation today mark.</p> <p>19 Because we couldn't -- that would have been</p> <p>20 50 cents on -- that would have been who knows, but</p> <p>21 20 billion dollars. There just could be no bid.</p> <p>22 There was no bid for any of this on this date.</p> <p>23 And the second is a typo in there. It</p> <p>24 says "at a bin in comp." That should be "a bid in</p> <p>25 comp mark." That was presumably supposed to be</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 more of an assessment of, you know, if you had</p> <p>3 to -- if you were willing to buy it today, where</p> <p>4 would you buy it.</p> <p>5 So they are being asked to provide an</p> <p>6 assessment of both. But that wasn't for us.</p> <p>7 Q. "It wasn't for us" meaning --</p> <p>8 A. It wasn't for my group. That might</p> <p>9 have been for Lehman, it might have been for --</p> <p>10 Q. So is your group, this whole -- I</p> <p>11 understand you to be saying that your group was</p> <p>12 focused on getting the population that we had been</p> <p>13 provided, at least an accurate assessment of what</p> <p>14 we got?</p> <p>15 A. Yes, yes.</p> <p>16 Q. Was there another group focused on how</p> <p>17 to mark them price-wise? Or how to book them into</p> <p>18 Lehman's system -- I mean Barclays' system?</p> <p>19 A. No. Not -- not that part, but product</p> <p>20 control -- and -- I'm trying -- I was trying to</p> <p>21 explain what I do know about this e-mail and about</p> <p>22 things that happened on the Friday. So hopefully</p> <p>23 I have answered that question.</p> <p>24 Q. Yeah.</p> <p>25 A. This feels like a different question,</p>
Page 116	Page 117
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 which is was there another group that was also</p> <p>3 marking securities. Is that right?</p> <p>4 MR. STERN: I think what Bill wants to</p> <p>5 know is, who was involved in the booking of</p> <p>6 the securities and ultimately marking them</p> <p>7 on the Barclays side.</p> <p>8 A. As a formal matter, it is always the</p> <p>9 trader's responsibility to mark a book. As a</p> <p>10 practical matter then, there are price testing</p> <p>11 groups that are within that product control group,</p> <p>12 PCG function, that have a responsibility to assess</p> <p>13 whether the traders have marked their books</p> <p>14 correctly, and they can ask them to revisit their</p> <p>15 marking and remark them.</p> <p>16 Q. OK.</p> <p>17 A. That's the logic of the trader and the</p> <p>18 control function.</p> <p>19 Q. OK.</p> <p>20 A. So that would have been -- that at</p> <p>21 some point -- I don't know whether it was</p> <p>22 happening on the Friday. At some point that would</p> <p>23 have had to have happened.</p> <p>24 In addition, Barclays would have to</p> <p>25 construct the balance sheet, an acquisition</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 balance sheet that represented what it had</p> <p>3 ultimately purchased by way of this transaction.</p> <p>4 That again would be a finance -- it is finance's</p> <p>5 responsibility, not the desk's responsibility, to</p> <p>6 produce balance sheets.</p> <p>7 Therefore, finance would have to make</p> <p>8 a determination of what it thought was the</p> <p>9 appropriately price tested valuation for the</p> <p>10 securities that were acquired on the acquisition</p> <p>11 date.</p> <p>12 Q. OK.</p> <p>13 A. That didn't really happen. That</p> <p>14 happened over a very long period of time. So</p> <p>15 hopefully that answers that second question.</p> <p>16 Q. It does.</p> <p>17 The finance function and the</p> <p>18 preparation of the balance sheet I take it is in</p> <p>19 the finance department, not in the PMTG</p> <p>20 department; is that right?</p> <p>21 A. That's right. Under normal</p> <p>22 circumstances, if everything worked well, traders</p> <p>23 would mark their books. Those marks would be</p> <p>24 picked up by systems -- the same for Barclays as</p> <p>25 any other bank. Those marks would be picked up in</p>

Page 118	Page 119
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 systems, and they would roll up and actually form</p> <p>3 the valuations that are used in constructing</p> <p>4 balance sheets.</p> <p>5 Q. Right.</p> <p>6 A. There is a control function which is</p> <p>7 price testing, which is constantly vetting whether</p> <p>8 or not desks are marking their books</p> <p>9 appropriately, and so obviously with an</p> <p>10 acquisition like this, it was -- it would be, as</p> <p>11 we -- again, some of this is stuff I know after</p> <p>12 this date, but now know what would have been</p> <p>13 happening at that time. Responsibility to produce</p> <p>14 a balance sheet that represented what Barclays</p> <p>15 acquired on that date. That's obviously very</p> <p>16 related to what the desk is saying it is valuing,</p> <p>17 but it isn't necessarily the same.</p> <p>18 Q. Sure. I understand.</p> <p>19 Let's step back for a minute. You</p> <p>20 talked about the pool of assets that you, Barclays</p> <p>21 did receive on the Thursday night, Friday morning</p> <p>22 period.</p> <p>23 A. Right.</p> <p>24 Q. Did there come a time over the weekend</p> <p>25 when Barclays demanded more assets from Lehman in</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 connection with the Lehman transaction?</p> <p>3 MR. STERN: Objection to form.</p> <p>4 A. I don't really know what you mean.</p> <p>5 Are you talking about the -- there are -- the</p> <p>6 discussions with Lehman were ongoing and were</p> <p>7 separate from anything that we were dealing with</p> <p>8 here. We were --</p> <p>9 THE WITNESS: Can I ask you something</p> <p>10 about this?</p> <p>11 MR. STERN: Sure, sure.</p> <p>12 MR. HINE: OK. Is this a privileged</p> <p>13 question or is it --</p> <p>14 Let's go off the record.</p> <p>15 (Witness and his attorney left</p> <p>16 deposition room)</p> <p>17 (Recess)</p> <p>18 MR. HINE: Back on the record.</p> <p>19 Q. Mr. King, I think I asked a confusing</p> <p>20 question, so I want to try to clarify it.</p> <p>21 I am asking about, did there come a</p> <p>22 time during the weekend of the 20th and 21st where</p> <p>23 Barclays asked Lehman to provide additional</p> <p>24 assets, and what I am referring to is the -- what</p> <p>25 we have been calling unencumbered assets or the</p>
Page 120	Page 121
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 clearance box type of assets or 15c3 type of</p> <p>3 assets. I am trying to get a sense of whether you</p> <p>4 were involved in that issue.</p> <p>5 MR. STERN: Just one objection. I</p> <p>6 think we are talking about the 19th, but</p> <p>7 subject to that objection.</p> <p>8 Q. Correct, correct.</p> <p>9 A. No, I subsequently became aware that</p> <p>10 there were unencumbered assets that needed to be</p> <p>11 valued and risk assessed. But no, not at that</p> <p>12 point.</p> <p>13 It would come as no surprise that</p> <p>14 there was discussions, because as I pointed out</p> <p>15 earlier, that the -- you know, we were being asked</p> <p>16 to fund a -- to take the Fed out of the facility,</p> <p>17 valuing the portfolio securities that we hadn't</p> <p>18 seen, you know, before, and it was going to be</p> <p>19 very difficult to assess their value, and I very</p> <p>20 much doubt -- I would totally assume that there</p> <p>21 would be -- that under any normal circumstances,</p> <p>22 Barclays did not think that the lending of</p> <p>23 45 billion dollars against this portfolio of</p> <p>24 securities was a transaction which it would have</p> <p>25 done absent the Lehman business acquisition.</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. Sure.</p> <p>3 A. I mean, you just -- there was not</p> <p>4 enough -- you know, the approximations and guesses</p> <p>5 at value that we were attributing to the portfolio</p> <p>6 and putting normal liquidation, normal orderly</p> <p>7 liquidation value on assets that are supporting a</p> <p>8 45 billion dollar loan, which, as I said, if you</p> <p>9 had to suddenly sell, there would have been</p> <p>10 tremendous deficiencies on that loan. You</p> <p>11 couldn't have recovered it.</p> <p>12 The fact that somewhere else in the</p> <p>13 organization there would have been these</p> <p>14 negotiations about where is there incremental</p> <p>15 value to cover us for the massive risk that we are</p> <p>16 taking on this repo facility, I would assume that</p> <p>17 was the case, and that's why later on, 20th, 21st,</p> <p>18 or whatever it was, we first start to see the</p> <p>19 lists of unencumbered assets.</p> <p>20 It was certainly of no surprise to me</p> <p>21 that there had to be other places for value to be,</p> <p>22 given how -- what a substantial transaction that</p> <p>23 was.</p> <p>24 Q. Well, you didn't participate in any</p> <p>25 discussions between Lehman and Barclays on this</p>



Page 122

1 KING - HIGHLY-CONFIDENTIAL  
2 issue, right?  
3 A. No. Again, all we saw --  
4 Q. You are just surmising?  
5 MR. STERN: Let him finish.  
6 A. What I am saying, I became aware there  
7 were other assets and that we were then asked to  
8 do the same process on that we had done with all  
9 of the various categories, and it was of no  
10 surprise to me at all that there was incremental  
11 portfolio assets.  
12 In fact, we would be very pleased,  
13 because a -- even at -- in that time, even a  
14 50 billion -- even if that portfolio really did  
15 have a spot price, meaning a price that you really  
16 could liquidate on a second, that the last trade,  
17 the sum of the last trades observed was 50 billion  
18 dollars, and you lent 45 billion dollars, so  
19 that's a 10 percent haircut.  
20 When we assess risk, we always say now  
21 let's assume that every incremental time you  
22 trade, you push the price down, and it takes you  
23 however many days or weeks or years to be able to  
24 sell everything, given a normal size that trades.  
25 The likelihood that you would erode a 10 percent

Page 124

1 KING - HIGHLY-CONFIDENTIAL  
2 and Sunday, starting on the 19th, you weren't  
3 involved in any discussions between Lehman and  
4 Barclays as to additional assets that were  
5 supposed to be provided to Barclays over and above  
6 the pool that you just previously talked about  
7 that you received through the repo?  
8 A. I don't remember the timing of it,  
9 whether it was the Friday, Saturday, Sunday,  
10 Monday or the Tuesday or anytime thereafter.  
11 If I could delineate, discussions  
12 about whether or not Barclays should receive  
13 additional securities from Lehman, no, absolutely  
14 not. That we were provided with lists of  
15 additional securities, then yes, we were.  
16 Q. OK. But for the purpose of doing the  
17 assessment, the type of activities that you have  
18 been describing all day?  
19 A. Just to be able to -- yes. Someone  
20 has to -- you know, someone has to provide us with  
21 a list for us to be able to do what we are doing.  
22 So you provide me a list, we will assess it and we  
23 will hand it back to you.  
24 Q. Am I correct to say you don't have any  
25 specific knowledge about why you are being

Page 123

1 KING - HIGHLY-CONFIDENTIAL  
2 margin, even if that was the correct -- even if  
3 that really was the sum of the last trades you  
4 observed, would be very high. The likelihood that  
5 you didn't recover the full amount of the loan  
6 would be extremely high.  
7 So one would have to assume, I would  
8 have assumed that there was incremental value in  
9 the transaction to Barclays for doing the  
10 transaction, just because of the risk of that  
11 facility. Obviously I didn't see the securities  
12 until the weekend or so.  
13 Q. And you didn't participate in any  
14 discussions between Lehman and Barclays about a  
15 search for additional assets over the weekend,  
16 starting Friday, Saturday and Sunday?  
17 A. No.  
18 MR. STERN: Objection to the form as  
19 to the time frame.  
20 Q. My question then, starting on that  
21 Friday, the 19th, through the weekend, you weren't  
22 involved in any discussions between -- let me  
23 reask it so I have a clear record.  
24 A. Yeah.  
25 Q. I am talking about Friday, Saturday

Page 125

1 KING - HIGHLY-CONFIDENTIAL  
2 provided the list, you are just taking the list  
3 and doing what you do within your group?  
4 A. No, I can -- I understand why it  
5 should have been the case that there was  
6 incremental assets somewhere to provide collateral  
7 for this loan or for this transaction, but I'm  
8 surmising that just because of my commercial  
9 knowledge.  
10 Yes, I did see lists of securities  
11 that were provided to us. I don't really remember  
12 them arriving over the weekend, I have to say.  
13 Well, I remember they were -- by the end of the  
14 weekend we saw what was supposedly a list of  
15 unencumbered assets. Not a complete list but a  
16 list of unencumbered assets. But the negotiations  
17 or why or for what this was in lieu of, no.  
18 Q. Did you understand this list of  
19 unencumbered assets to be additional securities  
20 for the repo loan?  
21 A. No.  
22 Q. You understood it to be separate and  
23 apart from the repo transaction; is that right?  
24 A. To me -- you know, there was a repo  
25 transaction, but the reason for the repo

Page 126	Page 127
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 transaction, as I said, was not in isolation of</p> <p>3 the fact that we were acquiring, you know, other</p> <p>4 things.</p> <p>5 So I never really think of them as</p> <p>6 separate. I thought of it as being Barclays is</p> <p>7 having to put money out of the door against what I</p> <p>8 know is a portfolio of assets that have an</p> <p>9 estimated value that hopefully is more than the</p> <p>10 loan, but that doesn't look like a very good</p> <p>11 trade. So therefore, there has to be other stuff</p> <p>12 that's going on.</p> <p>13 But that's not part of our</p> <p>14 responsibility.</p> <p>15 Q. I guess this is what I am driving at.</p> <p>16 You told me before that on that Friday, you</p> <p>17 received 10 -- assets marked at 10 billion dollars</p> <p>18 that you hadn't expected?</p> <p>19 A. Yes.</p> <p>20 Q. Is the additional assets that Lehman</p> <p>21 provides over that weekend the result of Barclays'</p> <p>22 dissatisfaction with the securities it had been</p> <p>23 provided under the repo?</p> <p>24 A. I don't know. Not to -- no, I</p> <p>25 think -- no, not to the best of my knowledge. It</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 was -- no, not to the -- I think it was another</p> <p>3 list -- to us, it was another list of securities</p> <p>4 that was part of -- I mean, I think by the Friday,</p> <p>5 it must be the case that I had seen the draft of</p> <p>6 the asset purchase agreement, so I -- you know, I</p> <p>7 knew that there was a list of these securities</p> <p>8 that were in this repo facility, but there were</p> <p>9 lots of other things that were subject to the</p> <p>10 purchase agreement as well.</p> <p>11 So the fact that from time to time</p> <p>12 somebody would ask us, by the way, also there are</p> <p>13 these other things that look like things, Stephen,</p> <p>14 that you would be able to put an estimate of value</p> <p>15 on, and ultimately you will end up risk managing,</p> <p>16 that would come to me. Then I would respond to</p> <p>17 them, and I would assume that this was part of</p> <p>18 something that was a -- the repo transaction was</p> <p>19 just a subset of a liability and an asset that</p> <p>20 makes up the larger transaction.</p> <p>21 Obviously later on, I saw the</p> <p>22 acquisition balance sheets and things, so I could</p> <p>23 see that there were those pieces. So none of that</p> <p>24 was a surprise to me. But I wasn't part of the</p> <p>25 conversations.</p>
Page 128	Page 129
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. OK, very good.</p> <p>3 MR. STERN: Should we take a quick</p> <p>4 lunch break?</p> <p>5 MR. HINE: Sure. Let's go off the</p> <p>6 record.</p> <p>7 (Recess)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 AFTERNOON SESSION</p> <p>3 1:14 p.m.</p> <p>4 BY MR. HINE:</p> <p>5 Q. Good afternoon, Mr. King. I wanted to</p> <p>6 go over a few documents with you based on some of</p> <p>7 the things you have already talked about, but I</p> <p>8 did want to start off with two topics.</p> <p>9 First is the -- you have described how</p> <p>10 you received a bunch of assets through Lehman</p> <p>11 transactions on Friday, and then later on you</p> <p>12 received additional assets.</p> <p>13 Eventually, these assets get booked</p> <p>14 into Barclays' system, and is it correct that</p> <p>15 Barclays intended to conduct an orderly</p> <p>16 liquidation of those assets over time?</p> <p>17 A. On the -- it wasn't until later that</p> <p>18 we concluded that that's what we would do or how</p> <p>19 we would do it.</p> <p>20 Q. Do you know how much later? Do you</p> <p>21 have a time frame in mind?</p> <p>22 A. Days and weeks and -- days and weeks.</p> <p>23 Q. Is it fair to say probably sometime</p> <p>24 before the end of September of '08?</p> <p>25 A. We had been -- we had already disposed</p>

Page 130

1 KING - HIGHLY-CONFIDENTIAL  
2 of some by the end of September. Prior to the  
3 19th, it had been -- my expectation and  
4 understanding was that we would -- there were  
5 going to be a number of teams that were coming in  
6 from Lehman that would be integrated with the  
7 relevant Barclays team.

8 There was work that was going on -- it  
9 was a very fluid environment, very, very fluid  
10 environment. There was work that was going on in  
11 the front office trading teams to interview and  
12 integrate people, and it was our working  
13 assumption -- this is only really coming into play  
14 in the middle of that week -- that we would  
15 facilitate the booking and on boarding of the  
16 assets, and then we would be pushing them back  
17 into the relevant trading teams.

18 And at various times, the expression,  
19 you know, well, these are the guys that are going  
20 to be managing the assets, was used to refer to  
21 the Lehman people or the Barclays people. They  
22 would go to a desk.

23 As it transpired, as we went through  
24 the following days and weeks, we started to  
25 conclude that markets were much, much more broken

Page 132

1 KING - HIGHLY-CONFIDENTIAL  
2 and above the assets that we were originally  
3 managing.

4 So there was a bit of a change in  
5 plan, you know. There wasn't much of a plan, but  
6 the understanding changed over those -- over about  
7 ten days or so.

8 Q. So the assets that you received from  
9 Lehman in different tranches never were parceled  
10 out to the trading desks?

11 A. They were parceled out -- some of  
12 them, they were parceled out so that the trading  
13 desks could originally review them. We further  
14 refined that to say certain of the assets will be  
15 parceled out and managed by the respective trading  
16 desk and some of them won't be.

17 So it is a -- it is not as simple and  
18 straightforward a division as all assets were  
19 handed down to the respective trading desks. Some  
20 of them were. Some of them we sold to the  
21 respective trading desks so they could go out and  
22 sell them as quickly as possible.

23 Otherwise, PMTG retained the risk  
24 management responsibility but was facilitated by  
25 the respective trading desk in the liquidation,

Page 131

1 KING - HIGHLY-CONFIDENTIAL  
2 at a very, very fundamental level than we had  
3 really anticipated. And "we" being I think -- I'm  
4 not even talking about my group or Barclays, but  
5 "we" meaning financial markets and the general  
6 public at large hadn't quite realized how broken  
7 it was.

8 And we, very close to what was  
9 happening at Lehman, could see that some things  
10 are irreparably damaged here, and the ability to  
11 unwind quickly some of these assets is going to be  
12 very, very difficult.

13 And at that point I suggested, and  
14 this was then subsequently taken up, that rather  
15 than just push the assets back into the trading  
16 desks, even with segregated books in the trading  
17 desks, that we ought to manage them at a more  
18 coordinated -- in a more coordinated and central  
19 way and liquidate them in a more orderly fashion.

20 But that really was not -- and you may  
21 remember I said earlier on that my -- our group,  
22 my group PMTG changed at some point around the  
23 time. We actually brought additional resources  
24 into PMTG to facilitate that and took some  
25 responsibility for liquidating of the assets over

Page 133

1 KING - HIGHLY-CONFIDENTIAL  
2 and others we just kept and managed within our  
3 group and brought additional resources in to  
4 facilitate the management.

5 So there was three categories.

6 Q. When you say facilitate the  
7 management, meaning your group liquidated --

8 A. Managed and liquidated it.

9 Q. So has this orderly liquidation now  
10 been completed?

11 A. No. I think also to suggest --  
12 "orderly liquidation" to me tends to convey -- it  
13 is a term that's often used when trying to  
14 describe how -- what type of valuation you would  
15 attribute to a particular asset. I don't think  
16 anyone ever used the term "orderly liquidation" to  
17 describe particularly what we were doing. It was  
18 liquidation.

19 Q. OK, fair enough. I think I was using  
20 it because I saw it in one of the documents here.

21 But you say sometime in September the  
22 approach changed. Is the approach still to this  
23 day to liquidate all the assets that were acquired  
24 by Lehman or just select types of assets or  
25 categories?

Page 134	Page 135
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. It was, it was never -- it was never</p> <p>3 described to me that the intention was to retain</p> <p>4 for longer than was necessary or sensible any of</p> <p>5 the assets.</p> <p>6 Q. So is there a way to assess now,</p> <p>7 several months later, whether Barclays made money</p> <p>8 on this pool of assets it received from Lehman?</p> <p>9 A. We made -- some assets were sold at or</p> <p>10 above their marks, and many of them were sold</p> <p>11 below, and many of them are still there.</p> <p>12 Q. Let me ask it differently. Has</p> <p>13 Barclays undertaken some kind of after-action</p> <p>14 assessment or any kind of assessment or review to</p> <p>15 see if, in fact, they made money on the securities</p> <p>16 and other assets that they acquired from Lehman?</p> <p>17 A. No.</p> <p>18 Q. You have never seen any reports to</p> <p>19 that effect or any kind of spreadsheets to that</p> <p>20 effect?</p> <p>21 A. At various times, at various times,</p> <p>22 more for management reporting purposes I think</p> <p>23 than financial reporting purposes, we, my group or</p> <p>24 Barclays had -- product control has attempted to</p> <p>25 describe how much money was made or lost over a</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 period of time on certain aspects -- certain</p> <p>3 assets.</p> <p>4 A -- I think it was included, I think</p> <p>5 it was included in a footnote to the year-end</p> <p>6 financial statement, is the acquisition balance</p> <p>7 sheet for Lehman. I don't remember whether it was</p> <p>8 actually published or whether I just saw it and it</p> <p>9 was somehow integrated into it. I think it was</p> <p>10 published.</p> <p>11 You know, that report is a negative</p> <p>12 goodwill number, is purportedly a profit of the</p> <p>13 acquisition, but it includes many things that are</p> <p>14 nothing to do with the assets that we have talked</p> <p>15 about here because it includes items such as</p> <p>16 goodwill, real estate, receivables, et cetera.</p> <p>17 So there was -- there is a statement</p> <p>18 there about supposedly some number that is</p> <p>19 attached to the profitability. But I think of</p> <p>20 that as an accounting requirement report for</p> <p>21 financial reporting purposes of the transaction.</p> <p>22 But that describes the valuation of</p> <p>23 the securities according to a set of rules that</p> <p>24 are influenced by accounting guidelines and rules</p> <p>25 on a particular day. And I think the date that</p>
Page 136	Page 137
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 was picked was the 22nd.</p> <p>3 And a very sophisticated set of rules</p> <p>4 were developed over the subsequent months that</p> <p>5 would guide PWC and Barclays' product control and</p> <p>6 finance to be able to be comfortable that it had</p> <p>7 adequately come up with an asset value for these</p> <p>8 assets and for other things that were -- so</p> <p>9 including certain contingent claims that were</p> <p>10 going to be included on the balance sheet.</p> <p>11 But it doesn't say anything there</p> <p>12 about how much profit or loss was made on those</p> <p>13 assets after that date, and it is an incredibly</p> <p>14 difficult exercise to actually aggregate all of</p> <p>15 that because of the three different places that I</p> <p>16 described to you that the assets ended up.</p> <p>17 Some assets were sold to traders and</p> <p>18 then they subsequently sold them. So there is a</p> <p>19 P&amp;L item, if you like, that turns up in the</p> <p>20 negative goodwill that's on that acquisition</p> <p>21 balance sheet. There is a P&amp;L that we experienced</p> <p>22 between what was the price that PMTG seemed to</p> <p>23 acquire the assets and where it sold them to the</p> <p>24 desks, and then there is another item where the</p> <p>25 desk sold it to the street and there are gains and</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 losses on the various hedges, and I'm using that</p> <p>3 word in the way you were using "hedges," the</p> <p>4 various instruments that were used to try to risk</p> <p>5 manage while the assets were in situ in the P&amp;L.</p> <p>6 There is the gains and losses on those.</p> <p>7 So I have never seen a number which</p> <p>8 says how much did we make.</p> <p>9 Q. I think I understand what you are</p> <p>10 saying, but the disclosure that was made in the</p> <p>11 financial statement is a snapshot of the gain on</p> <p>12 acquisition, right? It doesn't even purport to</p> <p>13 cover gains that might have taken place later as</p> <p>14 to those securities?</p> <p>15 A. Or losses, more importantly losses,</p> <p>16 right.</p> <p>17 Q. So my question is, I see the snapshot</p> <p>18 of the gain on acquisition of about 4.2 billion</p> <p>19 dollars. Has Barclays undertaken any efforts</p> <p>20 after that to assess what we are talking about,</p> <p>21 the possibility that it gained or lost on all the</p> <p>22 securities it acquired?</p> <p>23 A. Not in an isolated way. Clearly, all</p> <p>24 those gains and losses are part of the normal P&amp;L</p> <p>25 that all of the desks report, but there isn't a</p>

Page 138

1 KING - HIGHLY-CONFIDENTIAL  
2 line item --  
3 Q. OK.  
4 A. -- that says P&L related to Lehman  
5 securities.  
6 Q. I understand that. I was just -- as a  
7 layman, outside the organization, I would think  
8 someone would have said, hey, did we make any  
9 money on that pool of securities we bought last  
10 year?  
11 A. There is certainly -- people  
12 frequently asked, but it is not easy to answer  
13 because -- and it is a tremendous amount of work,  
14 so no one bothered to answer it.  
15 Q. Just to trace them in all the places  
16 they went?  
17 A. Trace them, and there were some  
18 aspects of it that had to be done so there was  
19 adequate reporting in trading statements and  
20 year-end statements and things, but -- and I don't  
21 think it is ever, you know, that -- the  
22 acquisition gain that you are referring to doesn't  
23 ascribe gains or losses on the securities. It  
24 just talks about on everything that was subject  
25 to -- was either -- just the difference between

Page 140

1 KING - HIGHLY-CONFIDENTIAL  
2 assets. I don't think we -- I don't think we ever  
3 went back to remark -- we didn't really -- my desk  
4 didn't really care very much about what the mark  
5 was on the 19th in many respects. We cared about  
6 what it was for a certain date that we took a  
7 snapshot, so that we could report day two P&L, or  
8 day one P&L, day two P&L, day two P&L being  
9 everything after -- all the P&L associated with  
10 the assets after they have been booked.  
11 So we cared about a particular  
12 snapshot, and I think we took a number that was  
13 closer to -- a date that was closer to the end of  
14 the month for that purpose. End of September.  
15 And then we looked at P&L changes from that date  
16 on individual line items. Not aggregate but just  
17 individual line items.  
18 Q. That was your best estimate at the  
19 time --  
20 A. At that time, and then that continued  
21 to be refined as we found out more about the  
22 securities or passed them out to the respective  
23 desks or sold them or what have you.  
24 Q. Sure. But for financial reporting  
25 purposes, that was your best estimate at that

Page 139

1 KING - HIGHLY-CONFIDENTIAL  
2 the assumed assets and liabilities of the  
3 transaction.  
4 Q. Were you involved in helping provide  
5 information that would go into the assessment of  
6 that initial gain on acquisition?  
7 A. Yeah, once again we could -- the  
8 estimated values for the securities was provided  
9 by my desk to finance.  
10 Q. And you mentioned some stringent rules  
11 that were applied in that regard?  
12 A. That's somewhat after the fact. As I  
13 described it, you know, it is not exactly a  
14 normal -- as much as possible Barclays, given the  
15 environment we were in, was attempting to follow  
16 as many of the normal rules and procedures that it  
17 would do for an acquisition, even though this one  
18 was obviously extremely large.  
19 So, you know, initial estimates of  
20 what that balance sheet would have looked like  
21 were on -- in relation to the securities, were  
22 derived from my desk's estimates, where they were  
23 available, of the values for the securities.  
24 With time, obviously the individual  
25 desks that were receiving the assets marked the

Page 141

1 KING - HIGHLY-CONFIDENTIAL  
2 time?  
3 A. That was the best estimate. We  
4 provided the best estimate, and then product  
5 control started to -- as things started to  
6 stabilize, product control took over its normal  
7 process about starting to think about how it would  
8 prepare its financial statements, and then  
9 therefore, obviously our information was an input  
10 to that, but it was only an input, and they used  
11 multiple sources, I think, to construct the  
12 assumed valuations for the 19th.  
13 (Exhibit 390-B, document Bates stamped  
14 BCI-EX-S 52667 through 68 with attachment  
15 marked for identification, as of this date.)  
16 Q. Mr. King, handing you a copy of a  
17 document marked as Exhibit 390-B, which has Bates  
18 ranges BCI-EX-S 00052667 through 668, and then  
19 there is an attachment which is produced in native  
20 form which we have attached to the exhibit.  
21 It is a Monday, September 22nd e-mail  
22 entitled "Long Island Draft Balance Sheet/Goodwill  
23 Calc." Do you see that?  
24 A. Um-hm.  
25 Q. After you have had a moment to review

Page 142	Page 143
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 it, I would like to ask you a question about it.</p> <p>3 MR. STERN: Have you read the e-mail?</p> <p>4 THE WITNESS: Yeah, I will come back</p> <p>5 to that in one second.</p> <p>6 A. Yes.</p> <p>7 Q. My question is, do you see the entry</p> <p>8 on the first covering e-mail -- I understand that</p> <p>9 you are not a party to that e-mail, but it is</p> <p>10 discussing the acquisition balance sheet, and the</p> <p>11 fourth bullet down refers to the "2.83B valuation</p> <p>12 adjustment is S. King's first cut only." Do you</p> <p>13 see that?</p> <p>14 A. Yes.</p> <p>15 Q. And if we refer to the last page of</p> <p>16 the document, I see an entry for 2.83 billion. Do</p> <p>17 you know what -- is that the 2.83 adjustment,</p> <p>18 first-cut adjustment that the e-mail is talking</p> <p>19 about?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know what -- can you explain to</p> <p>22 me what that valuation adjustment is?</p> <p>23 A. Yes. It is linked to your previous</p> <p>24 questions. There has to be -- and this changed</p> <p>25 over time. There has to be -- this concept, and</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 we have touched on it a few times during the --</p> <p>3 through the course of the conversations, of there</p> <p>4 being a value, a valuation, seems to imply that</p> <p>5 there is a single price, but of course that isn't</p> <p>6 actually the case.</p> <p>7 When you are referring to orderly</p> <p>8 liquidation -- for example, I think the e-mail</p> <p>9 that we had in front of us earlier was that the</p> <p>10 CMO guys told me he was told to give two months</p> <p>11 orderly liquidation in the bid in comp. So there</p> <p>12 he has used -- you can see he is being given an</p> <p>13 instruction. That is actually a quite formal</p> <p>14 instruction.</p> <p>15 An orderly liquidation mark is</p> <p>16 something that people understand to mean -- that</p> <p>17 was on Exhibit 389-B. That was something that</p> <p>18 people sort of understand to mean if there is --</p> <p>19 sometimes we come into work in the mornings and we</p> <p>20 get a phone call saying, will you bid on the</p> <p>21 following. And if we have got enough capital and</p> <p>22 we feel like doing it, then we may say yes, and</p> <p>23 the guy may want to sell us the stuff for</p> <p>24 30 million dollars and we may bid 10. And if he</p> <p>25 really needs a bid, then he will hit our 10.</p>
Page 144	Page 145
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 I wouldn't describe that as an orderly</p> <p>3 liquidation. And in fact, we have seen a lot of</p> <p>4 that during the course of the last two years, of</p> <p>5 course, as so many counterparties have defaulted</p> <p>6 on obligations and their assets have been seized</p> <p>7 and liquidated.</p> <p>8 Under normal circumstances it is not a</p> <p>9 straightforward process. In marking our books, we</p> <p>10 have to try to assess whether or not we are</p> <p>11 supposed to use those pricing points in marking</p> <p>12 assets.</p> <p>13 They are clearly actually where</p> <p>14 something just traded. Something was sold from</p> <p>15 one party to another party at that price.</p> <p>16 Somebody was willing to trade. But they weren't</p> <p>17 really willing to trade -- it wasn't particularly</p> <p>18 by design that they traded there, they had to</p> <p>19 trade, it was sold. Maybe it was seized and sold</p> <p>20 or they needed to sell it to create liquidity, but</p> <p>21 it wasn't exactly orderly.</p> <p>22 So on that page 389-B, where it says</p> <p>23 "orderly liquidation mark and bidding comp,"</p> <p>24 that's kind of -- it's trying to highlight there</p> <p>25 really is a little bit of a difference between the</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 two of those.</p> <p>3 We mostly mark our positions as if</p> <p>4 there was an orderly disposal. Not necessarily</p> <p>5 that that's what we plan on doing with them. We</p> <p>6 might hold them, might sell them. There is lots</p> <p>7 of things we try to do, but we try to keep that</p> <p>8 concept in mind.</p> <p>9 At this stage, on Monday, the 22nd,</p> <p>10 this balance sheet, the valuation adjustment was</p> <p>11 equal to the difference between -- I think it was</p> <p>12 the 45 point -- Thursday close. The</p> <p>13 45.18 billion, which is the Thursday -- this is</p> <p>14 the inventory Thursday close, 45.18. That would</p> <p>15 have been, if memory serves, the BoNY marks for</p> <p>16 the portfolio.</p> <p>17 And -- there is a little bit of P&amp;L in</p> <p>18 here. I think that is probably carried, and then</p> <p>19 the valuation adjustment on this day, this isn't</p> <p>20 necessarily on subsequent balance sheets, but on</p> <p>21 this day would be equal to the difference between</p> <p>22 the BoNY -- I think the BoNY marks and our current</p> <p>23 best guess, based on everything that we have got</p> <p>24 available to us, of the orderly liquidation mark.</p> <p>25 So it is trying to get from one number</p>

Page 146

1 KING - HIGHLY-CONFIDENTIAL  
2 to another number. With time, both of those, the  
3 definitions of those were clarified, but that was  
4 what this was on that date, and that's why Gary  
5 refers to it as valuation adjustment, as S. King's  
6 first cut only.  
7 It is not an upper-case term,  
8 valuation adjustment. It was just a term that we  
9 started to use to be the difference between where  
10 there was some observable marks that could have  
11 been the BoNY marks and where we were saying we  
12 would probably book things. Again, it was to try  
13 to make the difference between the day one and day  
14 two P&L.  
15 Q. This is Monday, the 22nd. That's the  
16 date on which the financial statement ultimately  
17 says, let's report the acquisition as of on that  
18 date, right?  
19 A. Yes.  
20 Q. If you look at 5, I don't know if that  
21 helps in your answer. I'm not sure you saw that.  
22 A. OK.  
23 Q. So that confirms that the --  
24 A. That's actually -- so we put that --  
25 it is in there, initial estimate of the adjustment

Page 148

1 KING - HIGHLY-CONFIDENTIAL  
2 that weekend, correct?  
3 MR. STERN: Objection to the form.  
4 Q. If you can describe that, that's fine.  
5 A. On the 22nd, I wouldn't even have  
6 known what 15c3 meant, and 15c3 asset wasn't -- is  
7 not a security or anything that we -- it is just a  
8 line item on here. It is not an asset -- it is  
9 not a tradable asset.  
10 Q. OK. And the 7 billion in cash, is  
11 that the -- in the next, next line item, 7 billion  
12 in cash, is that the 7 billion that came over to  
13 Barclays as a result of the repo transaction?  
14 MR. STERN: Objection to the form.  
15 You can answer.  
16 A. The cash, the 7 billion was the cash  
17 item on here. Actually, I have seen -- obviously  
18 I've seen this before and various subsequent  
19 iterations of it. But we didn't prepare this.  
20 So --  
21 Q. "We" meaning --  
22 A. My desk. So we didn't have any input  
23 to anything that was -- you know, we would provide  
24 Gary numbers, and we wouldn't have had any input  
25 below inventory, because they are not securities.

Page 147

1 KING - HIGHLY-CONFIDENTIAL  
2 to Barclays' marks, BoNY prices and Barclays'  
3 marks. That's precisely that.  
4 Q. The BoNY price of 45 billion is the  
5 BoNY marks assessed on what pool of assets?  
6 A. What is -- I don't know if this is  
7 clear on this. It is just inventory on this day.  
8 Q. Maybe I could ask a clarifying  
9 question while you look at that.  
10 Is the 45 -- my question is, is the  
11 45.18 the BoNY marks for the assets you received  
12 from the repo, or does it also include other  
13 assets that you received later?  
14 A. That's what I was just trying to  
15 check. There is a version of this where they are  
16 separated. But I don't think we were able to do  
17 that as early as the 22nd.  
18 Q. That's the Monday following.  
19 A. Yeah. Because I can only see one --  
20 45.18 inventory, 15c3, financial assets.  
21 Yes, I think it is 45.18. It is just  
22 whatever we -- at this point whatever we knew of.  
23 Q. If you read further down on that  
24 column, you will see a reference to 15c3 assets,  
25 so that's a separate asset that you received over

Page 149

1 KING - HIGHLY-CONFIDENTIAL  
2 Now, the 7 billion dollars is the  
3 cash, but I know that the 7 billion dollars is the  
4 cash that we thought we had in relation to the  
5 nonsecurity-based collateral for the repo  
6 facility.  
7 Q. If I look on here, I don't see --  
8 well, could you tell me if there is any entry on  
9 here that covers what we have been calling  
10 unencumbered assets or the clearance box assets,  
11 or have they not yet come over to Barclays?  
12 A. I -- as I say, there must be a hundred  
13 of these balance sheets that were, you know, as  
14 product control refined them. I don't know how  
15 many I have seen, but I've seen a few of them  
16 between here and the end of the year. This is an  
17 early version of it. And so you will have to  
18 forgive me if I can't remember exactly the 45.18.  
19 Inventory on the Friday morning, I  
20 think from memory, is everything that we thought  
21 we received at the -- by the date of -- by some  
22 date on which we provided -- I don't know what  
23 date -- I don't know what date Gary is producing  
24 this, so it might have been this is from the  
25 Friday numbers or Saturday numbers or Sunday

Page 150	Page 151
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 numbers. It is probably not the Monday numbers,</p> <p>3 because it is produced on Monday. I suppose it is</p> <p>4 produced late on Monday.</p> <p>5 But it doesn't separate out the</p> <p>6 unencumbered assets that we had already received</p> <p>7 by that point. It doesn't separate it out. So I</p> <p>8 think that everything that we had received to this</p> <p>9 point was in that number.</p> <p>10 Q. Back to the 2.83 valuation adjustment.</p> <p>11 How did you come up with that 2.83 number? Is</p> <p>12 that the top-down analysis we talked about</p> <p>13 earlier?</p> <p>14 A. No. We never came up, so we, my group</p> <p>15 never came up with 2.83. 2.83 is a difference</p> <p>16 between a set of marks and our marks. So it is</p> <p>17 not like I come up with -- it is not that I come</p> <p>18 up with 2.83. We would come up with on here 42.55</p> <p>19 as a -- on the spreadsheet or the inventory, and</p> <p>20 say we've marked all the individual line items,</p> <p>21 and then product control will tell us at that --</p> <p>22 based on all your individual marks or your best</p> <p>23 estimate here -- I think by this date we were</p> <p>24 still working on spreadsheets -- we estimate that</p> <p>25 what we have got is worth 42 and a half billion</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 dollars.</p> <p>3 Then they would compare that to the</p> <p>4 marks for some of the inventory at the BoNY marks,</p> <p>5 and that's what that last paragraph says. It said</p> <p>6 the trades are initially booked at BoNY prices, so</p> <p>7 no one is calculating the 2.83. The 2.83 is the</p> <p>8 difference between the BoNY marks and the desk</p> <p>9 marks.</p> <p>10 Q. And the desk marks are -- Barclays is</p> <p>11 going CUSIP by CUSIP and putting a mark in for --</p> <p>12 A. Where possible, yes. Where possible.</p> <p>13 And it is the best guess by the desk, by my desk</p> <p>14 using input from as many other sources as we</p> <p>15 possibly can of an orderly liquidation mark, not</p> <p>16 where we would -- if we were to -- if we had</p> <p>17 turned around and asked somebody to bid on this</p> <p>18 day for 42 and a half billion dollars worth of</p> <p>19 securities, it would have been 30-something</p> <p>20 billion.</p> <p>21 Q. I understand that. I'm just trying to</p> <p>22 understand the origin of the marks that Barclays</p> <p>23 put on it. Did Barclays adopt marks that Lehman</p> <p>24 had put on these assets?</p> <p>25 A. No.</p>
Page 152	Page 153
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. I have heard testimony in other</p> <p>3 instances where Lehman valued those assets at</p> <p>4 42.9. This appears to be very close to the</p> <p>5 Barclays marks. Did you have any consideration or</p> <p>6 discussion between Lehman and Barclays as to their</p> <p>7 own marks?</p> <p>8 A. Well, some of the marks were -- we</p> <p>9 actually used to make the unfunny joke that 42 and</p> <p>10 a half versus 49, you know, or 50 versus 48 and a</p> <p>11 half, it is kind of close. It is -- that's half</p> <p>12 of a billion dollars, so that's a gap. That's</p> <p>13 500 million dollars of, you know, rounding.</p> <p>14 And that would have come from more of</p> <p>15 a -- it just sort of highlights just how much</p> <p>16 uncertainty there was. You would be very</p> <p>17 surprised if there was absolutely no relationship</p> <p>18 between the BoNY marks, the JP marks, the Lehman</p> <p>19 marks, the Barclays estimates. If they weren't of</p> <p>20 some similar order of magnitude, you know you have</p> <p>21 a major failing of a control system somewhere.</p> <p>22 But still, I don't -- we never really</p> <p>23 needed to use the Lehman marks, other than -- the</p> <p>24 only place where we used the Lehman marks was</p> <p>25 where we had no idea what the security was other</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 than a CUSIP, some generic name, and the Lehman</p> <p>3 mark, then we would have said we will value it at</p> <p>4 a discount to the Lehman mark because we have</p> <p>5 nothing else to go on. It could be worth nothing.</p> <p>6 Many of them were worth nothing. Not</p> <p>7 because Lehman had -- bear in mind, the Lehman</p> <p>8 marks were from days -- they were old, they were</p> <p>9 what we call stale. Many of them were -- I think</p> <p>10 most of the stuff we were looking at earlier was</p> <p>11 on the 12th, which was before the bankruptcy of</p> <p>12 Lehman Brothers Holdings, and even during that</p> <p>13 previous week, most of the traders were out -- at</p> <p>14 Lehman were more worried about their own futures</p> <p>15 than necessarily marking their books, and markets</p> <p>16 were already very, very distressed.</p> <p>17 So the idea that those markets were</p> <p>18 good on -- those marks were good on the 22nd after</p> <p>19 two bankruptcies and Merrill being acquired by --</p> <p>20 or being bailed out, is -- there is a</p> <p>21 tremendous -- you know, the value of them is</p> <p>22 that -- so there were cases where we said -- and</p> <p>23 some of them were appropriately marked by Lehman</p> <p>24 but worthless to Barclays.</p> <p>25 A good example would be there were</p>



Page 154

1 KING - HIGHLY-CONFIDENTIAL  
2 warrants that were in the repo facility, I  
3 remember roughly it was 300 million dollars as a  
4 good example. 300 million dollars issued by  
5 Lehman referencing other credits.  
6 Now, those, as long as Lehman exists,  
7 are worth roughly the amount of the reference  
8 credit, but the moment that Lehman defaults, they  
9 are worthless. So Lehman had them appropriately  
10 marked where they would have traded them prior to  
11 Lehman's insolvency. They are just called fixed  
12 income security on a schedule that we had, and  
13 they are actually worthless, and there were  
14 instruments like that in the repo facility.  
15 Now, we wouldn't have known that until  
16 days, many days later.  
17 Q. So this 2.83 adjustment is derived  
18 from comparing the BoNY marks to Barclays' own  
19 marks?  
20 A. PMTG's current best guess at an  
21 orderly liquidation.  
22 Q. At that particular date?  
23 A. On that particular date. It doesn't  
24 say if the other bidding -- you know, that's an  
25 orderly liquidation as opposed to a bidding comp

Page 156

1 KING - HIGHLY-CONFIDENTIAL  
2 but I don't think I have -- I don't know -- I  
3 don't really recognize this one.  
4 Q. Do you have any understanding or can  
5 you give me your best -- withdrawn.  
6 Do you have any understanding of what  
7 this document is modeling?  
8 MR. STERN: Objection to the form.  
9 Calls for speculation.  
10 Q. Attempting to model?  
11 MR. STERN: You are asking for him to  
12 guess or --  
13 MR. HINE: Yeah.  
14 MR. STERN: I object to guessing.  
15 Q. You can answer the question.  
16 A. Well, it describes PMTG and it -- and  
17 the cumulative amounts are the same as the sheet  
18 we looked at before. Slightly different. So it  
19 looks like -- it looks like many reports that were  
20 produced around this time that are of a population  
21 of securities that in some way are linked back to  
22 that, but I don't know this -- especially not  
23 with -- without any date or anything on it, it is  
24 just one of any number of spreadsheets.  
25 Q. Do you know -- can you tell by looking

Page 155

1 KING - HIGHLY-CONFIDENTIAL  
2 liquidation.  
3 MR. STERN: Should we take a short  
4 break?  
5 THE WITNESS: Sure.  
6 (Recess)  
7 BY MR. HINE:  
8 Q. Mr. King, I am going to hand you a  
9 copy of a document marked as Exhibit 86-B. After  
10 you have had a minute to look at it, I would then  
11 like to ask you a couple of questions, first  
12 regarding whether you have ever seen this document  
13 before.  
14 MR. STERN: Take your time and look at  
15 it, and that's the question: Have you ever  
16 seen it before?  
17 THE WITNESS: OK.  
18 Q. Have you ever seen this document  
19 before, Mr. King?  
20 A. I've never seen the document before.  
21 I don't think I have seen the spreadsheet before.  
22 Q. Does it look like anything else you  
23 have seen before?  
24 A. Unfortunately, it looks like a  
25 tremendous number of things I have seen before,

Page 157

1 KING - HIGHLY-CONFIDENTIAL  
2 at it, the form, who, which department within  
3 Barclays might have prepared this?  
4 A. Only by the fact that it talks about  
5 PCG values, as well as PMTG, and -- I would think  
6 it is a -- well, it is a reconciliation of  
7 something with something, and it looks -- it  
8 clearly has a similar set of securities as the  
9 previous -- as 39-B, I think it is, but what it  
10 was trying to achieve or who prepared it -- it  
11 could be either our desk or PCG. It would have to  
12 be one of the two.  
13 Q. Have you ever heard of anything  
14 referred to as PCG liquidity value?  
15 A. Isn't that just --  
16 Q. That's the column heading for column  
17 F. Do you see that?  
18 A. Isn't that just D minus E?  
19 Q. It very well could be. I'm curious if  
20 you ever heard the term used, "PCG liquidity  
21 value."  
22 A. No.  
23 Q. Is that -- do you see the column  
24 marked E which says "MV09/22 with bid-offer"? Do  
25 you see that column?

Page 158	Page 159
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Did your department undertake any</p> <p>4 efforts to, on or around 9/22, to solicit bids or</p> <p>5 offers for these types of securities?</p> <p>6 A. No.</p> <p>7 Q. Did you have any idea of where that,</p> <p>8 the entries in that column would have come from?</p> <p>9 MR. STERN: Objection to the form.</p> <p>10 You can answer.</p> <p>11 A. I -- I would -- I am -- I would be</p> <p>12 very surprised if column E -- column E, market</p> <p>13 value 09/22 with bid offer, is a term that we in</p> <p>14 PMTG -- those could be -- they could have come</p> <p>15 from PMTG. They might have come from an aggregate</p> <p>16 of other places.</p> <p>17 I would think they came from PMTG, and</p> <p>18 as far as I can see, F is just D minus E.</p> <p>19 Q. OK. Do you see on the left-hand</p> <p>20 column there appears to be a list of various</p> <p>21 categories of securities? Do you see that?</p> <p>22 A. Yeah.</p> <p>23 Q. Below that, PMTG and then another</p> <p>24 entry for PMTG2. Are those -- other than being</p> <p>25 the initials for your department, would you --</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 could you -- do you have any idea what securities</p> <p>3 are being pooled in those entries?</p> <p>4 MR. STERN: Objection to the form.</p> <p>5 A. No. I mean over there -- you say this</p> <p>6 is on the 22nd?</p> <p>7 Q. I don't have a date for it. I see the</p> <p>8 entry -- well, the title at the top appears to be</p> <p>9 22 September.</p> <p>10 A. Oh.</p> <p>11 MR. STERN: The question is, do you</p> <p>12 have any idea what securities are being</p> <p>13 pooled in those entries. That's the</p> <p>14 question.</p> <p>15 A. I.17 billion. I think. I would just</p> <p>16 be guessing.</p> <p>17 Q. Don't know?</p> <p>18 A. No. I mean I would be guessing rather</p> <p>19 than I know.</p> <p>20 Q. OK. Mr. King, I would like to walk</p> <p>21 through a couple of documents here just to ask you</p> <p>22 some specific questions of those documents.</p> <p>23 The first one, I am going to hand you</p> <p>24 what was previously marked as Exhibit 302-A. It</p> <p>25 is very thick. I don't want to ask you about the</p>
Page 160	Page 161
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 whole document, I just want to ask you about the</p> <p>3 cover e-mail. But take your time to review</p> <p>4 whatever you need to review.</p> <p>5 It appears. This is dated Wednesday,</p> <p>6 the 17th. It appears that you are providing</p> <p>7 comments to the asset purchase agreement; is that</p> <p>8 correct?</p> <p>9 MR. STERN: Objection to the form.</p> <p>10 Q. Let me rephrase.</p> <p>11 What is this covering e-mail?</p> <p>12 A. It is an e-mail from me to Patrick,</p> <p>13 Mike and Jonathan. It is called asset purchase</p> <p>14 agreement comments. And those are comments to the</p> <p>15 asset purchase agreement that I would have</p> <p>16 provided to them.</p> <p>17 Q. OK. Do you recall providing comments</p> <p>18 to the asset purchase agreement?</p> <p>19 A. I now do. But I would have forgotten</p> <p>20 about it otherwise.</p> <p>21 Q. OK. I guess my first question: The</p> <p>22 agreement is signed on the 16th, so why are you</p> <p>23 providing comments the day after it is signed?</p> <p>24 A. I don't know. On that, I -- don't</p> <p>25 forget, to me, I then didn't know -- until you</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 told me earlier today that there was an agreement</p> <p>3 signed on the Tuesday, I didn't know that. Or at</p> <p>4 least I certainly didn't remember it.</p> <p>5 Q. Why would you be sending these</p> <p>6 agreements to Mr. -- these comments to Mr. Cox?</p> <p>7 Do you recall?</p> <p>8 A. No.</p> <p>9 Q. Do you see in the first entry it talks</p> <p>10 about purchase assets, and the third sentence in</p> <p>11 that entry, entry number one, says, "Can</p> <p>12 securities be sold to LBI without approval at a</p> <p>13 discount to current mark?" Do you see that?</p> <p>14 A. Yeah.</p> <p>15 Q. Do you recall why you were making that</p> <p>16 comment?</p> <p>17 A. No, though reading it in its entirety,</p> <p>18 it also says, "Are hedges put on by LBI after the</p> <p>19 agreement is signed included? Any limits or</p> <p>20 restrictions?"</p> <p>21 So on the 17th, you know, on the 17th</p> <p>22 is before we got into the repo. This is the --</p> <p>23 these are -- these are commenting on something</p> <p>24 before we actually -- not on the final form of the</p> <p>25 transaction.</p>

Page 162

1 KING - HIGHLY-CONFIDENTIAL  
2 Q. Sure, it is before the repo.  
3 A. It is before the repo.  
4 Q. Right.  
5 A. So as a structurer of -- being  
6 familiar with structured credit transactions, both  
7 of those comments read that we were obviously very  
8 worried, our desk was very worried that given the  
9 distress in the markets at the time, that if  
10 things were just sold into the open market, that  
11 they would be sold at tremendous discounts to  
12 their marks.  
13 Even though they are marked in this  
14 orderly liquidation, if someone started selling  
15 them, then you would crystallize phenomenal loss,  
16 and both of these comments seem to suggest that at  
17 the time I was worried that we didn't have -- as a  
18 risk manager looking at how were we going to  
19 control the management of the assets on an ongoing  
20 basis.  
21 Q. You ask in number one can they be sold  
22 without approval. Whose approval are you talking  
23 about there?  
24 MR. STERN: Sold by LBI.  
25 A. Sold by LBI. If you read 1 and 7 --

Page 164

1 KING - HIGHLY-CONFIDENTIAL  
2 MR. HINE: I understand that.  
3 MR. STERN: I think that's what the  
4 confusion is.  
5 MR. HINE: I understand that.  
6 Q. Let me ask it differently. Are you  
7 referring in any way to court approval?  
8 A. I don't think so. I wouldn't have  
9 known to refer to court approval.  
10 Q. Are you referring in any way to board  
11 of directors approval?  
12 A. I really don't think so, because if  
13 you read that -- these are pretty prosaic  
14 comments. I would have to see where I was  
15 commenting -- you know, I would have to reread the  
16 document to see where I was specifically  
17 commenting.  
18 But if I read, "Are hedges put on by  
19 LBI after the agreement is signed included? Any  
20 limits or restrictions?" So I seem to be  
21 inferring what can LBI do to affect this  
22 population.  
23 Q. You are wondering about what LBI can  
24 do between the signing of the agreement and  
25 closing of the agreement?

Page 163

1 KING - HIGHLY-CONFIDENTIAL  
2 well, 7 says, "Are hedges put on by LBI after the  
3 agreement is signed included? Any limits or  
4 restrictions?"  
5 Q. Right.  
6 A. So I am saying, both of those seem to  
7 infer that -- and this would be a sensible comment  
8 for me to be worried about if there is a portfolio  
9 of assets and I put a value on them, if somebody  
10 sells those assets or manages those assets after I  
11 think I am exposed to them, I have no control over  
12 whether or not they would do something stupid. I  
13 mean it is LBI.  
14 Q. I understand that, but whose approval  
15 are you talking about there in that sentence?  
16 A. I don't remember. This is -- this  
17 e-mail relates to a form of transaction that  
18 didn't happen, so there was no ongoing involvement  
19 of LBI, where LBI had people in this portfolio.  
20 I read that as a sentence that I typed  
21 as asking who does LBI have to get approval from  
22 if they sell.  
23 Q. And has --  
24 MR. STERN: In other words, Bill, sell  
25 to somebody other than Barclays.

Page 165

1 KING - HIGHLY-CONFIDENTIAL  
2 A. I can't remember this in particular,  
3 as I say, because it didn't happen. That's what I  
4 read, as having put structured transactions  
5 together. I could assess a portfolio of assets  
6 that you had and say, I think they are worth X,  
7 and then I inadvertently leave you with control to  
8 do whatever you want to do with them, and the  
9 first thing you do is go and sell them or put  
10 pointless hedges on them, or you do something  
11 stupid.  
12 Q. That's what you are worried about?  
13 A. I read that to mean that, and I would  
14 think that therefore within -- if you think about  
15 the scope of what I was responsible for, which is  
16 valuation and risk management of a defined  
17 population, and I made the point earlier about one  
18 of the main things we are worried about is  
19 population, I read that sentence -- I am having to  
20 do this with a year -- on a transaction that  
21 didn't happen with a year of time in between. I  
22 read that to mean can the population be affected  
23 without my control.  
24 Q. I understand that.  
25 A. I think.

Page 166	Page 167
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. Now, when it says discount, do you</p> <p>3 recall any discussions or having any understanding</p> <p>4 at the time that Barclays was acquiring assets</p> <p>5 from Lehman at a discount?</p> <p>6 MR. STERN: Objection to the form.</p> <p>7 Asked and answered.</p> <p>8 A. I wasn't -- can you repeat that</p> <p>9 actually.</p> <p>10 (Record read)</p> <p>11 A. As I pointed out before, I wasn't</p> <p>12 party to any of those discussions.</p> <p>13 I would have to also question</p> <p>14 discounts to what. If it is a discount to BoNY's</p> <p>15 marks or something, then I would say I was</p> <p>16 assuming that my desk was viewing the assets as</p> <p>17 not being worth the BoNY marks, but I don't know</p> <p>18 if that's what you mean by discount.</p> <p>19 Q. I'm just trying to exhaust your</p> <p>20 recollection on discussions you might have heard</p> <p>21 or understandings you might have heard about the</p> <p>22 discussions between Barclays and Lehman.</p> <p>23 MR. STERN: Your question? I don't</p> <p>24 think there is a question.</p> <p>25 Q. So let's reread the question. Do you</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 recall any discussions or having any understanding</p> <p>3 at the time that Barclays was acquiring assets</p> <p>4 from Lehman at a discount?</p> <p>5 A. So I wasn't party to the</p> <p>6 discussions -- to any discussions, but I didn't</p> <p>7 think that -- if I -- I would have to define</p> <p>8 discount to what, and then if I -- if you said --</p> <p>9 if you had asked me the question did I think that</p> <p>10 the -- we should pay less than where Lehman had</p> <p>11 marked the securities on the 12th or where BoNY or</p> <p>12 JP had marked them on the 17th, then I would say</p> <p>13 yes. But I don't know whether that's what you are</p> <p>14 asking.</p> <p>15 Q. I understand your answer. I was</p> <p>16 asking if you have any knowledge of the</p> <p>17 discussions between Lehman and Barclays --</p> <p>18 A. No.</p> <p>19 Q. -- as to that subject?</p> <p>20 A. No.</p> <p>21 Q. Can we skip ahead to the repo</p> <p>22 transaction, which is the September 18 repo.</p> <p>23 A. Yeah.</p> <p>24 Q. Did Barclays provide a list of assets</p> <p>25 that it wanted excluded from the repo or would not</p>
Page 168	Page 169
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 accept as collateral in the repo?</p> <p>3 A. No. We didn't have any option on</p> <p>4 the -- going into the -- we weren't -- "we" being</p> <p>5 PMTG, weren't aware of any flexibility as to what</p> <p>6 we were going to receive. That was part of the</p> <p>7 problem, was we are going to take delivery of --</p> <p>8 remember you asked me the questions earlier about</p> <p>9 what were you looking at, Steve, and I was</p> <p>10 provided an inventory of securities on the</p> <p>11 Wednesday, Thursday, that represented what I would</p> <p>12 take delivery of.</p> <p>13 And then it did happen to change by</p> <p>14 Friday, but that was not what we were expecting to</p> <p>15 receive, that list of securities.</p> <p>16 Q. I am talking about before the Friday.</p> <p>17 I'm talking about in the Wednesday, Tuesday,</p> <p>18 whenever you are talking about the repo, were</p> <p>19 there certain assets that Barclays would not</p> <p>20 accept as collateral for that repo?</p> <p>21 A. No. I -- on the Wednesday -- so the</p> <p>22 Wednesday or Thursday we are analyzing the repo,</p> <p>23 we just assumed we were taking delivery of</p> <p>24 whatever was described to us as being in the repo</p> <p>25 on the Thursday.</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. Described to you by who?</p> <p>3 A. In the schedule of securities</p> <p>4 provided -- you asked me the question earlier as</p> <p>5 to -- about a list of securities that was in the</p> <p>6 repo, and I answered that I didn't know where it</p> <p>7 came from, whether it was from operations or the</p> <p>8 Fed or whoever, but somebody provided us a list of</p> <p>9 securities on the Thursday, which is the list we</p> <p>10 thought we would take delivery of. It wasn't the</p> <p>11 list that we ultimately took delivery of, but it</p> <p>12 was the list that we passed out to the various</p> <p>13 traders.</p> <p>14 We didn't think that we had any option</p> <p>15 to pick and choose.</p> <p>16 MR. STERN: Is that the list that you</p> <p>17 referred to as having an hour and a half to</p> <p>18 look at?</p> <p>19 THE WITNESS: The hour and a half to</p> <p>20 look at, yes.</p> <p>21 Q. This might clarify the question. I am</p> <p>22 going to hand you a document that was previously</p> <p>23 marked as I43-B. It is an e-mail stream of which</p> <p>24 you are not a party to until you get to page 2.</p> <p>25 MR. STERN: Take a look at the whole</p>

Page 170	Page 171
<p>1 KING - HIGHLY-CONFIDENTIAL 2 thing. 3 Q. You can look at the whole thing. I am 4 just directing your attention to an entry on 5 page 2, which is an e-mail from you to David 6 Petrie, and it attaches something called excluded 7 mortgage assets. 8 A. Right. 9 Q. So take your time to look at the 10 document, but my questions are going to be 11 primarily about that attachment. 12 A. OK. 13 Q. Have you ever seen this document 14 before? 15 A. Yes. 16 Q. Can you tell me what the attachment 17 which is titled "Excluded Mortgage Assets 9/17/08" 18 is? 19 A. Yeah. It is from the 6.5 billion 20 dollars of assets on the -- let me look here. 21 Q. Is that the exhibit we first used in 22 this -- 23 A. Yeah, I think so. 24 Q. I think it is -- 25 A. 388-B.</p>	<p>1 KING - HIGHLY-CONFIDENTIAL 2 Q. The 6.6 billion in mortgage? 3 A. Yeah. So once upon a time in the 4 first part of the week, we had suggested that we 5 wouldn't -- remember I said that we wouldn't take 6 all of the mortgage and mortgage-backed total. So 7 we divided it into two pools, the included and the 8 excluded. 9 So that e-mail from the 17th, unless I 10 have made a mistake, it is an e-mail about the 11 assets that we wouldn't be taking out of the 12 mortgage and mortgage-backed securities. 13 Q. So these are mortgages you are not 14 going to take? 15 A. These would be -- yes, that's the -- 16 well, it was -- in the early part of the week it 17 was the list of securities which we were 18 suggesting that we wouldn't take, "we" being my 19 group, suggesting that we would rather not take 20 out of the total mortgage and mortgage-backed 21 total. 22 Q. It is really nothing to do with the 23 repo. It has to do with the agreement to only 24 take a portion of the mortgage-related securities? 25 A. That's correct.</p>
Page 172	Page 173
<p>1 KING - HIGHLY-CONFIDENTIAL 2 Q. And then that agreement eventually 3 changes toward the end of the week? 4 MR. STERN: Objection to the form. 5 A. As I have said, I only know that what 6 we were looking at at the beginning of the week 7 didn't end up being the transaction. I don't know 8 how the agreement changed. 9 Q. Let's talk about mortgage, the pool of 10 mortgages-related securities itself. What 11 happened to that? Did Barclays end up getting 12 those securities? 13 A. Some of them, because some of them 14 were in the repo, but not all of them were in the 15 repo. 16 Q. And is the part that was in the repo 17 the securities that did not make it to this 18 schedule? 19 A. I think I described -- 20 MR. STERN: Let me hear that question 21 again, please. 22 MR. HINE: Let me try again. That was 23 confusing. 24 Q. You talked about this schedule, and I 25 am talking about Exhibit --</p>	<p>1 KING - HIGHLY-CONFIDENTIAL 2 MR. STERN: 143-B. 3 Q. 143 -- all right, 143-B, that's the 4 schedule of mortgage-related securities that -- 5 A. Correct. 6 Q. -- Barclays did not want included in 7 the transaction, correct? 8 A. Right. 9 Q. And that was -- the counterpart to 10 that is the securities that Barclays would allow 11 in the transaction, right? 12 MR. STERN: Objection to the form. 13 A. I'm not sure what we mean by -- if we 14 mean what we understood at the beginning of the 15 week my group was asked to assess as a portfolio 16 of assets that would end up being part of the 17 purchase agreement, then this pertains to that. 18 What ultimately happened was of course completely 19 different. 20 Q. Well, that's what I am asking. What 21 ultimately happened to the pool of mortgage-backed 22 securities? 23 A. Some of them I don't know, because the 24 388-B balance sheet was -- was not completely -- 25 you know, it -- what does he have, 65.1 -- it says</p>

Page 174	Page 175
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 65.16 billion dollars. That's on 388-B again,</p> <p>3 65.16 billion.</p> <p>4 So it is bigger than -- that number is</p> <p>5 bigger than the repo facility which at any one of</p> <p>6 the various marks that people had put on was less</p> <p>7 than 50 billion dollars.</p> <p>8 So not -- using your Venn diagram, not</p> <p>9 all of these securities are in the repo facility.</p> <p>10 MR. STERN: And you're pointing to</p> <p>11 388-B.</p> <p>12 THE WITNESS: I'm pointing to 388-B.</p> <p>13 Q. I'm just trying to chase what happens</p> <p>14 to the pool of mortgage-backed securities that</p> <p>15 were originally marked as 60 billion on 388-B,</p> <p>16 what happens to them by the end of the week?</p> <p>17 A. I don't know on all of them. All I</p> <p>18 know is some of them were in the list -- some of</p> <p>19 them -- some of them were collateral that was</p> <p>20 pledged to the Fed as far as my desk knew on the</p> <p>21 Thursday, Wednesday, Thursday.</p> <p>22 Q. The Fed?</p> <p>23 A. Yeah. Some of them were in the Fed</p> <p>24 facility. Every single -- a bank -- I mean every</p> <p>25 single -- a balance sheet is made up of assets and</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 liabilities. Some of them -- all assets have to</p> <p>3 be financed, especially for a broker dealer like</p> <p>4 Lehman. So, many of these assets were financed by</p> <p>5 the Fed. Therefore, they would have also been in</p> <p>6 the Fed facility.</p> <p>7 Q. Right.</p> <p>8 A. But there is 65 billion of assets</p> <p>9 here, so they couldn't all fit in the Fed</p> <p>10 facility, which was only 50 billion.</p> <p>11 Q. I understand.</p> <p>12 A. Some of them weren't even in what we</p> <p>13 thought was the Fed facility on the Wednesday,</p> <p>14 Thursday.</p> <p>15 Q. OK.</p> <p>16 A. So some of them were just gone.</p> <p>17 MR. STERN: But he is asking you about</p> <p>18 Exhibit -- the list on Exhibit 143-B.</p> <p>19 THE WITNESS: Yeah.</p> <p>20 MR. STERN: What happened to those.</p> <p>21 Q. No, I am asking the pool of securities</p> <p>22 on 388-B --</p> <p>23 MR. STERN: You didn't ask that.</p> <p>24 MR. HINE: Yes, I did.</p> <p>25 Q. It was originally marked at</p>
Page 176	Page 177
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 6.5 billion, and you were describing to me that</p> <p>3 some of that made it into the repo, as I</p> <p>4 understand it.</p> <p>5 A. Some of them were in the -- some of</p> <p>6 them -- if we looked at a list of securities on</p> <p>7 388-B, some of those securities, many of those</p> <p>8 securities were also in -- also being financed by</p> <p>9 the Fed.</p> <p>10 Q. Right.</p> <p>11 A. So they were what we thought were in</p> <p>12 the repo facility that we were going to assume</p> <p>13 when we reviewed that list of securities on the</p> <p>14 Wednesday, Thursday. Not all of them, though.</p> <p>15 Some of them were just not there. And some of</p> <p>16 them would have therefore been excluded assets and</p> <p>17 some of them would have been included assets.</p> <p>18 I seem to -- I remember that there was</p> <p>19 not many of the excluded assets -- no, actually I</p> <p>20 can't remember exactly how many of the included</p> <p>21 or -- since the included and excluded list</p> <p>22 pertained to the Lehman balance sheet, not to the</p> <p>23 repo facility, there were both included and</p> <p>24 excluded assets in the Thursday repo facility.</p> <p>25 Q. So in the Thursday -- September 18</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Thursday repo facility --</p> <p>3 A. Before it was the Barclays -- the Fed</p> <p>4 one.</p> <p>5 Q. No. I want to know -- I want to keep</p> <p>6 the story going. The September 18 repo facility,</p> <p>7 some of those assets eventually make their way to</p> <p>8 Barclays, and within that pool of assets, there</p> <p>9 are a certain number of mortgage-related</p> <p>10 securities; is that right?</p> <p>11 A. Yes. There was some -- some of the</p> <p>12 mortgage-related securities were in the Fed</p> <p>13 facility. Some other securities as well.</p> <p>14 Q. Do you know how many of the securities</p> <p>15 within -- that came to Barclays constituted</p> <p>16 mortgage-related securities?</p> <p>17 A. There is a difference. Again on the</p> <p>18 Thursday when we were looking at what we thought</p> <p>19 we were going to receive from the Fed, there was a</p> <p>20 certain amount of the securities that were on that</p> <p>21 list.</p> <p>22 On the Friday, by the Friday when</p> <p>23 we -- after the Fed facility has been refinanced</p> <p>24 by the Barclays repo facility, then there were --</p> <p>25 out of the 30 or so billion dollars of the</p>

Page 178

1 KING - HIGHLY-CONFIDENTIAL  
2 securities that were both in the Fed facility that  
3 ended up in the Barclays facility, there were some  
4 of the mortgage assets, but in addition there were  
5 other assets, other mortgage assets, some other of  
6 the mortgage assets which we hadn't looked at on  
7 Thursday, but we had looked at on Tuesday, that  
8 turned up in the extra 10 billion.  
9 Q. So as you talked about earlier, on  
10 Friday you realize there is two different types --  
11 you assumed two different types of securities,  
12 about 32 billion worth of securities that you  
13 already knew about using the JPM marks?  
14 A. Correct.  
15 Q. And 10 billion using the BoNY marks of  
16 securities that you didn't expect to receive?  
17 A. Correct.  
18 Q. There were mortgage securities in both  
19 of those groups; is that right?  
20 A. That's correct. Yes.  
21 Q. Do you know about how much?  
22 A. I remember it being about 3, 3 billion  
23 I think. It was about 3 billion, and we thought  
24 they were worth about 1 and a half.  
25 Q. And those are the types of -- when you

Page 180

1 KING - HIGHLY-CONFIDENTIAL  
2 Mr. Malloy around -- on Friday, the 19th?  
3 A. I'm on the e-mail, so yes.  
4 Q. Do you have any understanding of why  
5 Mr. Malloy prepared this analysis?  
6 A. Marty was just involved in the  
7 settlement of the repo, so he -- I don't know why  
8 he produced this in particular. It is a pretty --  
9 the original e-mail is a pretty vanilla e-mail  
10 just saying -- I don't know who Jackie Stanley  
11 Jones is, but it is just a description of Fed wire  
12 securities, but I don't know what it is other than  
13 that.  
14 Q. You don't know why he prepared it?  
15 A. Marty and others, Gerard and others  
16 needed to know what was being received by  
17 Barclays, so there would have been a lot of  
18 e-mails on Friday morning saying -- starting to  
19 try to get a handle on what had been received.  
20 This looks like one of many of those.  
21 Q. Did you ever hear any discussions on  
22 Thursday or Friday of that week about the amount  
23 of excess collateral that had been posted towards  
24 the repo?  
25 A. I've never heard -- I don't think I

Page 179

1 KING - HIGHLY-CONFIDENTIAL  
2 say 3 billion, that's within both of those two  
3 groups?  
4 A. Yeah. That's what I remember.  
5 Q. And those are the types of securities  
6 that you have been focusing on because they get  
7 put into your group eventually?  
8 A. That's correct, yeah.  
9 MR. STERN: Is there a question?  
10 MR. HINE: No. He answered it.  
11 MR. STERN: Just wait for a question.  
12 BY MR. HINE:  
13 Q. Did you want to elaborate on  
14 something?  
15 A. No. I was just thinking about that.  
16 That's fine.  
17 Q. Mr. King, I am going to hand you  
18 another document, that has been previously marked  
19 as 144-A, and my question is whether you have ever  
20 seen that before.  
21 A. Yes.  
22 Q. What is this document?  
23 A. I've seen it before, but I don't  
24 really know.  
25 Q. Did you receive a copy of this from

Page 181

1 KING - HIGHLY-CONFIDENTIAL  
2 have heard the term "excess collateral" per se,  
3 but there was -- we were obviously extremely  
4 worried on the Friday. We were very worried on  
5 Wednesday and Thursday. We had a population of  
6 securities and we were very worried that those  
7 really might not be worth 45 billion dollars.  
8 We were even more worried -- that was  
9 with at least a list that was purportedly going to  
10 be delivered to us.  
11 We were even more worried over  
12 Thursday night and into Friday that now we just  
13 had a list of stuff that we had no idea whether it  
14 was worth what we just lent against it. So there  
15 was lots of discussion of whether there was  
16 adequate collateral or how -- actually, no one  
17 really talked about whether there was adequate  
18 collateral. It was just how much was the  
19 collateral worth.  
20 So there was that discussion, but not  
21 excess collateral per se.  
22 (Exhibit 391-B, document Bates stamped  
23 BCI-EX-S 136198 marked for identification,  
24 as of this date.)  
25 Q. Mr. King, I am handing you a document

Page 182

1 KING - HIGHLY-CONFIDENTIAL

2 marked as Exhibit 391-B, which has Bates stamp  
3 BCI-EX-S 000136198. If you wouldn't mind taking a  
4 moment to look at it.

5 A. OK.

6 Q. Have you ever seen this e-mail before?

7 A. No. Other than I am copied on it. It  
8 is to me, so once upon a time presumably, but I  
9 don't remember it.

10 Q. No recollection of this e-mail?

11 A. I remember the discussions we were  
12 having about the time, but I don't remember the  
13 e-mail.

14 Q. Could you describe for me the  
15 discussions you were having about the topics in  
16 this e-mail?

17 A. Yeah. I alluded to them earlier  
18 actually. You can actually see in this e-mail the  
19 evolving plan of how to deal with the assets that  
20 were coming on board. And in fact, you could see  
21 a number of things here.

22 Eric obviously -- you know, Keegan  
23 going back to John, both John and I work for Eric.

24 Q. John?

25 A. Mahon. So the e-mail from Mike Keegan

Page 183

1 KING - HIGHLY-CONFIDENTIAL

2 is to John Mahon, and both John and I work for  
3 Eric, so he's -- Mike is correctly pointing out  
4 that if we need additional resources, we really  
5 need to ask Eric for additional resources.

6 You can see some of the evolving  
7 discussions about what we do with the assets, are  
8 we passing assets over to the trading books. You  
9 see still here on the Friday, you can see the  
10 allusion to the idea of the trading books on  
11 Monday, as if the flow trading desks will receive  
12 the assets on Monday in a normal way, and another  
13 group which will liquidate them.

14 So you start to see the evolving plan  
15 of how do we manage the assets on an ongoing  
16 basis. Do we push them back to the business or do  
17 we liquidate them.

18 You can also see Nick Leyhane, who  
19 assisted me on the equities, it highlights just  
20 how much -- he is saying half a billion dollars of  
21 S&P -- I think this is out of -- September, 8  
22 a.m. -- is that London time or New York time?

23 Q. I don't know.

24 A. The equities, equities amount is  
25 before we realized we actually had 8 billion

Page 184

1 KING - HIGHLY-CONFIDENTIAL

2 dollars worth of equities, not 500 million  
3 dollars. So in that delivery there was  
4 considerable more equities than we originally  
5 thought, and that kind of highlights that we had a  
6 very different problem on our hands on Friday than  
7 we thought we were going to have on Thursday.

8 Q. I want to focus on the first two  
9 paragraphs, where it looks like if the court says  
10 no and if the court says yes. Do you see those?

11 A. Right.

12 Q. Do you recall discussions about those  
13 two options or possibilities?

14 A. No.

15 Q. The second paragraph, where it says,  
16 "If the court says yes," it says, "we will split  
17 the book into two bits. One group of assets are  
18 those that are part of the deal which needs to be  
19 passed over to the trading books on Monday, and  
20 another group which will liquidate them."

21 Do you recall any discussions about  
22 splitting the books in bits, or does that ring a  
23 bell with you at all?

24 A. No. Yeah, I mean we discussed -- as I  
25 said earlier, we discussed the idea that some of

Page 185

1 KING - HIGHLY-CONFIDENTIAL

2 the assets would be managed by the desks, and some  
3 of them would be managed by my desk. Even though  
4 it was not within our historic mandate, we would  
5 staff up the desk to be able to do it.

6 I can't -- I don't really  
7 understand -- I don't have any recollection of the  
8 court stuff or why that would be of any relevance.

9 Q. Are we OK? Do we need a break at all?

10 A. No.

11 Q. While we are looking for a document,  
12 Mr. King, do you recall any discussions during the  
13 week of the 15th or I guess toward the end of the  
14 week of the 15th about whether Barclays was going  
15 to take on Lehman's short positions as opposed to  
16 its long positions?

17 A. At the end of which week?

18 Q. At the end of the week of the 15th.

19 Not in the early part of the week but towards the  
20 end.

21 A. No.

22 Q. Did Barclays end up taking on Lehman's  
23 short positions or did they not?

24 A. No.

25 Q. That's what I thought. But do you



Page 186	Page 187
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 remember any discussions about that possibility or</p> <p>3 taking on selective short positions?</p> <p>4 A. No. I mean early on in the week,</p> <p>5 early on in the week there was the balance sheet</p> <p>6 which has longs and shorts on it, but I don't</p> <p>7 remember that at the end of the week.</p> <p>8 Q. Right. OK.</p> <p>9 And by the end of the week, Barclays</p> <p>10 was not taking on the short positions; is that</p> <p>11 right?</p> <p>12 MR. STERN: Objection, objection to</p> <p>13 the form.</p> <p>14 A. I just don't remember any discussion</p> <p>15 of the shorts, and I don't -- I didn't end up</p> <p>16 managing any short positions, so.</p> <p>17 Q. OK. Let me hand you a document that</p> <p>18 has previously been marked as Exhibit 8. Again it</p> <p>19 is a thick document. I am not going to ask you</p> <p>20 about most of it, but primarily relating to the</p> <p>21 second page.</p> <p>22 You take as much time as you want to</p> <p>23 review the document.</p> <p>24 A. OK.</p> <p>25 Q. My question is, if you could turn to,</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 I think the second page, it has LBI net long</p> <p>3 inventory, some kind of spreadsheet. Do you see</p> <p>4 that?</p> <p>5 A. Um-hm.</p> <p>6 Q. First of all, let me start with have</p> <p>7 you ever seen this document before?</p> <p>8 A. No.</p> <p>9 Q. Have you ever seen this spreadsheet</p> <p>10 before?</p> <p>11 A. I don't think so, no.</p> <p>12 Q. Do you have any understanding of what</p> <p>13 its purpose is?</p> <p>14 A. No.</p> <p>15 Q. Is that a no?</p> <p>16 A. Yeah, no.</p> <p>17 Q. Can you tell by looking at it who</p> <p>18 might have prepared it?</p> <p>19 A. It could be anybody. Anybody at</p> <p>20 Lehman who had access to the inventory.</p> <p>21 Q. So you think this is a Lehman</p> <p>22 spreadsheet?</p> <p>23 A. LBI -- LBI on the 17th. They would</p> <p>24 see this money market. It says LBI on the 17th.</p> <p>25 Q. So this is --</p>
Page 188	Page 189
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. It would have to be produced by LBI</p> <p>3 or -- I mean it had to be produced by a Lehman</p> <p>4 person.</p> <p>5 Q. Do you know why Mr. Gerard was</p> <p>6 forwarding this to you on Friday?</p> <p>7 A. He didn't forward it to me. Where is</p> <p>8 me?</p> <p>9 Q. In the middle of the page 1, it</p> <p>10 says --</p> <p>11 A. Oh.</p> <p>12 Q. -- Jerry Reilly forwarding it to you.</p> <p>13 You are a recipient on the e-mail.</p> <p>14 A. Me and Jonathan.</p> <p>15 I am sorry, I don't know what it is.</p> <p>16 MR. HINE: Can we take a five-minute</p> <p>17 break, so I can see if I can finish up here.</p> <p>18 MR. STERN: Yes, yes.</p> <p>19 (Recess)</p> <p>20 BY MR. HINE:</p> <p>21 Q. Mr. King, just a few questions and</p> <p>22 then my portion of this day will be done.</p> <p>23 If you could turn to Exhibit 390-B,</p> <p>24 which I asked you about previously, in particular</p> <p>25 the last page of 390-B. This is the acquisition</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 balance sheet that we talked about earlier.</p> <p>3 I just had some -- I need some</p> <p>4 clarification of you on two items. First of all,</p> <p>5 do you recall talking about the 2.83 number, the</p> <p>6 valuation adjustment?</p> <p>7 A. Correct.</p> <p>8 Q. And I thought you had said, and I'm</p> <p>9 not trying to -- I just want to bring you back to</p> <p>10 your old testimony. I thought you said that that</p> <p>11 was the result of a difference between the 45.18</p> <p>12 number and a number based on the marks that</p> <p>13 Barclays had put on the securities they had</p> <p>14 received from Lehman. Is that right?</p> <p>15 A. Based on the --</p> <p>16 Q. As of that date.</p> <p>17 A. -- PMTG, my group's best estimate as</p> <p>18 of that date from whatever source, we had managed</p> <p>19 to put forth an orderly liquidation value.</p> <p>20 Q. And I guess my question is, where did</p> <p>21 you get those marks that you put on those -- where</p> <p>22 did PMTG get those marks?</p> <p>23 A. I got them from a combination of</p> <p>24 the -- remember I said I -- we had chopped up the</p> <p>25 file and -- file of securities and passed it out</p>

Page 190	Page 191
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 to relevant Barclays desks or we had marked them</p> <p>3 ourselves, or if we didn't know what it is, we had</p> <p>4 estimated it in some variety of ways.</p> <p>5 Q. Were some of the marks, marks that you</p> <p>6 had put on these assets earlier in the week, say</p> <p>7 back in Monday or Tuesday?</p> <p>8 A. Yeah. Unfortunately, the process</p> <p>9 lagged, you know, because it was always -- it was</p> <p>10 almost impossible to keep marks -- so for this</p> <p>11 balance sheet for example, for example, this would</p> <p>12 have had to have been produced based on data that</p> <p>13 we had provided to Gary over the weekend that</p> <p>14 would have been based on marks that we had put on</p> <p>15 the portfolio or -- marks that we had put into our</p> <p>16 spreadsheet on the 19th, some of which would have</p> <p>17 been based on marks that we had come up with at</p> <p>18 the beginning of the week.</p> <p>19 Q. So it is the accumulated marking by</p> <p>20 Barclays starting in the 15th all the way through</p> <p>21 that week?</p> <p>22 A. Yeah.</p> <p>23 Q. Is the set of marks you used?</p> <p>24 A. I think it is also -- rather than</p> <p>25 using Barclays, it is PMTG at that point. I'm not</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 sure the firm had espoused our position, so that</p> <p>3 was -- it was PMTG's latest estimate line by line,</p> <p>4 and then that was refined over a period of time.</p> <p>5 Q. And then so PMTG -- I didn't mean to</p> <p>6 ascribe a difference between PMTG and Barclays,</p> <p>7 but PMTG has been trying to put marks on these</p> <p>8 various securities dating back to the prior</p> <p>9 Monday, all the way to the 15th?</p> <p>10 A. Correct.</p> <p>11 Q. This 2.83 is the product of a series</p> <p>12 of marks created by that process that -- as of the</p> <p>13 22nd?</p> <p>14 MR. STERN: Objection to the form.</p> <p>15 Q. Let me rephrase that. Let me rephrase</p> <p>16 it.</p> <p>17 The marks that you used to come up</p> <p>18 with the 2.83 number were PMTG marks, as of the</p> <p>19 22nd --</p> <p>20 A. No, I don't know whether these are --</p> <p>21 no.</p> <p>22 Q. OK.</p> <p>23 A. This e-mail is as of the 22nd.</p> <p>24 Q. OK, I understand.</p> <p>25 A. I notice it is at the end of the</p>
Page 192	Page 193
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 London day, but it is still as of the 22nd.</p> <p>3 I don't remember -- we were very, very</p> <p>4 heavily embroiled in the risk management of the</p> <p>5 assets that we had acquired by this Monday.</p> <p>6 Q. OK.</p> <p>7 A. So I don't remember whether this</p> <p>8 was -- some of the marks that PMTG was using may</p> <p>9 well have been updated on this Monday. Some of</p> <p>10 them may have been latest guess over the weekend.</p> <p>11 I think probably over the weekend, and</p> <p>12 then, in other words, they may have come -- some</p> <p>13 of them would have come from various stages during</p> <p>14 the course of the previous week.</p> <p>15 Q. I guess that was my question. I</p> <p>16 didn't mean to -- I am sorry.</p> <p>17 A. The 2.83 is -- what we would have done</p> <p>18 was put the value that we thought was on the</p> <p>19 portfolio of the 42.55, let's say, and then there</p> <p>20 was the sum of the BoNY marks, which was the</p> <p>21 45.18, and the 2.83 just drops out as the</p> <p>22 difference between the two.</p> <p>23 Q. While we are looking at that, what</p> <p>24 does the "Friday P&amp;L approx." entry mean?</p> <p>25 A. There is always carry and yield on a</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 portfolio. That would have been that. But I'm</p> <p>3 not sure -- that would have been what that is.</p> <p>4 Q. So other than that -- I think you have</p> <p>5 explained to me where you get the 2.83, but the</p> <p>6 marks that you used for PMTG were accumulated by</p> <p>7 PMTG from the period of the 15th through that</p> <p>8 weekend, the following weekend; is that right?</p> <p>9 MR. STERN: Objection to the form.</p> <p>10 You can answer.</p> <p>11 A. The -- there was a production line, if</p> <p>12 you like, of Barclays' desks, my people, me, Gary,</p> <p>13 that would have resulted in a steady evaluation of</p> <p>14 the best estimate at the mark, of what we thought</p> <p>15 would be an orderly liquidation mark or whatever</p> <p>16 mark we were being asked for at a particular time,</p> <p>17 to go into -- to go up to product control so that</p> <p>18 they could produce this.</p> <p>19 Q. And that process is what took place</p> <p>20 for the week of September 15?</p> <p>21 A. No.</p> <p>22 MR. STERN: Object to the form.</p> <p>23 A. No, that -- no. All that happened</p> <p>24 during the week of the 15th was that -- we</p> <p>25 didn't -- I don't remember seeing any acquisition</p>

<p style="text-align: right;">Page 194</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 balance sheets during the course of the week. All</p> <p>3 our desk did was try to ascertain the risk and the</p> <p>4 best guess of both a liquidation valuation and an</p> <p>5 orderly liquidation valuation during the course of</p> <p>6 that week.</p> <p>7 Once the transaction had closed on the</p> <p>8 Monday, then there was a -- there was both the</p> <p>9 risk management process, which was my problem, and</p> <p>10 also a control process, which was product</p> <p>11 control's, and obviously we had to have an input</p> <p>12 to product control, which is where the 42.55 would</p> <p>13 have been the latest -- Gary is using our latest</p> <p>14 estimate of value -- you can see it hadn't been</p> <p>15 updated because it still had the cash on it, for</p> <p>16 example, of the 7 that wasn't received and so on.</p> <p>17 Q. I didn't mean to suggest you were</p> <p>18 doing the acquisition balance sheet during the</p> <p>19 week. I just wanted to see when the -- the marks</p> <p>20 that you used were developed during that week; is</p> <p>21 that right?</p> <p>22 MR. STERN: Objection to the form.</p> <p>23 Objection to the form. I don't know what</p> <p>24 the question is.</p> <p>25 Q. You can answer.</p>	<p style="text-align: right;">Page 195</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 MR. STERN: The question is, is that</p> <p>3 right? What's the question?</p> <p>4 Q. You can answer.</p> <p>5 MR. STERN: Well, the question is, "I</p> <p>6 wanted to see when the marks that you used</p> <p>7 were developed during that week."</p> <p>8 MR. HINE: Jack, if you have an</p> <p>9 objection to the form, just state it. Don't</p> <p>10 coach him.</p> <p>11 MR. STERN: I am asking you what your</p> <p>12 question is.</p> <p>13 Q. When the marks that you used -- let me</p> <p>14 restate it.</p> <p>15 I didn't mean to suggest that you were</p> <p>16 working on the acquisition balance sheet, as I</p> <p>17 thought I might have confused you with my last</p> <p>18 question, during that week, the prior week, the</p> <p>19 15th.</p> <p>20 A. Right.</p> <p>21 Q. But in developing this 2.83, the marks</p> <p>22 that PMTG used were the product of its</p> <p>23 accumulating knowledge about the marks from the</p> <p>24 15th through the following weekend; is that right?</p> <p>25 A. We would have -- depending on the</p>
<p style="text-align: right;">Page 196</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 product type -- some -- the 8 -- for example, of</p> <p>3 that 42.55, approximately 8 billion dollars was</p> <p>4 cash equities. That's incredibly easy to mark</p> <p>5 from an accounting point of view. There is an</p> <p>6 exchange, you type in the ticker for the equity</p> <p>7 and you get a price. Therefore, that process took</p> <p>8 one of my analysts approximately -- I think he had</p> <p>9 Nick Leyhane in London do it for him -- 20 minutes</p> <p>10 to mark 8 billion dollars in assets.</p> <p>11 As a trading matter, it's useless</p> <p>12 because the -- but it is necessarily where a firm</p> <p>13 has to mark cash equities. Because there is an</p> <p>14 exchange. It says the price is 22 dollars for --</p> <p>15 you know, Barclays stock is at 3.98. Therefore,</p> <p>16 you better mark all the Barclays stock at 3.98.</p> <p>17 If you happen to be long a billion</p> <p>18 dollars of Barclays stock and you go out and sell</p> <p>19 it, you are never going to get 3.98, but the</p> <p>20 process is pretty easy from the point of view of</p> <p>21 providing an accounting number.</p> <p>22 What we had to do over and above</p> <p>23 that -- so that could have been updated and may</p> <p>24 well have been updated on Saturday or Sunday. We</p> <p>25 would have actually had the Bloomberg ticker in a</p>	<p style="text-align: right;">Page 197</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 spreadsheet, so it would have kept updating it.</p> <p>3 Other things are less easy. Other</p> <p>4 things are, you have to run a model. You have to</p> <p>5 take cash in and do all sorts of things to be able</p> <p>6 to determine what the price is. So there is a</p> <p>7 full range.</p> <p>8 8 billion dollars worth of equities</p> <p>9 doesn't trade at where those marks are. A good</p> <p>10 example would be, we had cash equities where the</p> <p>11 amount of the cash equity that we owned</p> <p>12 represented 400 days of the historical trading</p> <p>13 volume. That means if we would have traded as</p> <p>14 much of that stock as trades every day for the</p> <p>15 last 400 days, we still couldn't get out of our</p> <p>16 position.</p> <p>17 But still, the last mark, last penny</p> <p>18 of stock that traded was where we had to mark that</p> <p>19 position. It took us a year at that point to get</p> <p>20 out of those positions, and many of them therefore</p> <p>21 by construction every time we sold them took a</p> <p>22 loss every time. 300 million dollars of loss or</p> <p>23 whatever it was in the end, but every time we sold</p> <p>24 we were selling at a discount to the published</p> <p>25 mark. Easy to provide, put the published mark</p>

Page 198	Page 199
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 into that spreadsheet.</p> <p>3 The desk estimates were an attempt to</p> <p>4 then say, we have taken that, you know, where the</p> <p>5 exchange, such and such, and we assume it is going</p> <p>6 to cost us an additional 300 million dollars to</p> <p>7 bid side for us to be able to sell them. So we</p> <p>8 would have deducted that from that price, and that</p> <p>9 would have gone into the 42.55.</p> <p>10 Now, many times we were just wrong,</p> <p>11 because the market was also deteriorating as we</p> <p>12 went along. So it was going to end up costing us</p> <p>13 an awful lot more to actually sell the stuff.</p> <p>14 Not only did we have that problem,</p> <p>15 over the subsequent days we realized the 7 billion</p> <p>16 dollars wasn't going to turn up 7 billion dollars.</p> <p>17 We were going to get another slew of securities as</p> <p>18 well, many of which were securities that were on</p> <p>19 the excluded asset list that we didn't think were</p> <p>20 worth anything.</p> <p>21 So the problem was just getting -- but</p> <p>22 that's the reason why -- some aspects of providing</p> <p>23 that 42.55 could have been done on an ongoing</p> <p>24 basis and others -- but would still have been</p> <p>25 subject to a -- you know, an observable exchange</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 traded mark minus an estimate, and then others</p> <p>3 would have been things that would have really</p> <p>4 taken models or input from other desks to come up</p> <p>5 with.</p> <p>6 Q. OK. If you see further down on the</p> <p>7 spreadsheet, it says, "Previously excluded 50</p> <p>8 percent MBS." Do you see that?</p> <p>9 A. Yeah.</p> <p>10 Q. That's mortgage-backed securities?</p> <p>11 A. Is that a zero?</p> <p>12 MR. STERN: The question is what MBS</p> <p>13 means.</p> <p>14 A. Is that what --</p> <p>15 Q. Yes.</p> <p>16 A. MBS means mortgage-backed securities.</p> <p>17 Q. If you look at footnote 3 on that</p> <p>18 line, it says, "September 20 clarification letter</p> <p>19 indicates we no longer receive these assets." Do</p> <p>20 you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Do you have any understanding of what</p> <p>23 the September 20 clarification letter does?</p> <p>24 MR. STERN: Objection to form.</p> <p>25 Q. With respect to mortgage-backed</p>
Page 200	Page 201
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 securities?</p> <p>3 A. No.</p> <p>4 Q. OK. Did, in fact -- I know we have</p> <p>5 talked about earlier some of the mortgage-backed</p> <p>6 securities made their way into the 32 point -- 32</p> <p>7 billion dollar pool we talked about earlier and 10</p> <p>8 billion dollar pool from the repo. Do you recall</p> <p>9 that testimony?</p> <p>10 A. Can you say that again.</p> <p>11 Q. I'm just trying to get you back to the</p> <p>12 testimony, but we had previously talked about some</p> <p>13 of the mortgage-backed securities ended up in the</p> <p>14 pool of assets that Barclays received as a result</p> <p>15 of the repo, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And we compared that to the original</p> <p>18 number of 6.6 billion in mortgage-related</p> <p>19 securities. Do you recall that?</p> <p>20 A. Yes.</p> <p>21 Q. How many mortgage -- did Barclays</p> <p>22 ultimately get the entirety of the 6.6</p> <p>23 mortgage-backed securities? And I'm not talking</p> <p>24 about -- I'm not trying to confuse you with the</p> <p>25 valuation, but I'm just talking about the pool we</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 originally were talking about --</p> <p>3 A. I understand. No.</p> <p>4 Q. Did Barclays get all that?</p> <p>5 A. No.</p> <p>6 Q. Do you know how much Barclays did get?</p> <p>7 A. Eventually -- like by the end of the</p> <p>8 year? Or by --</p> <p>9 Q. Yeah.</p> <p>10 A. Because we got -- we got some -- we</p> <p>11 didn't get all of it. We weren't even supposed to</p> <p>12 get all of it for this thing. We got some of it</p> <p>13 in the Fed facility that we -- the 30-odd billion</p> <p>14 dollars of Fed facility assets that we thought we</p> <p>15 were going to get.</p> <p>16 Q. Right.</p> <p>17 A. We got some of it in the 10 billion</p> <p>18 dollars that we didn't think we were going to get,</p> <p>19 and got some of it as part of the JP settlement in</p> <p>20 lieu of the 7 billion dollars, and then some of it</p> <p>21 we never got.</p> <p>22 Q. Have you liquidated those securities</p> <p>23 yet?</p> <p>24 A. Some of them.</p> <p>25 Q. Most of them or a small portion of</p>

Page 202

1 KING - HIGHLY-CONFIDENTIAL  
2 them?  
3 A. Of what we are calling the  
4 mortgage-backed securities?  
5 Q. Yes, the entire pool of  
6 mortgage-backed securities that Barclays received,  
7 no matter how you got it, from Lehman.  
8 MR. STERN: Objection to --  
9 Q. Can you give me an estimate of the  
10 percentage of it that you have liquidated by now?  
11 MR. STERN: Objection to the form.  
12 A. We had about 4 point -- we only -- we  
13 estimated that the 6.5 billion was only worth at  
14 most about 3 point something billion, so -- and in  
15 the Lehman -- in the repo that we thought we were  
16 going to get, I think we thought that was about  
17 1.5, even though JP had it at about 3.3.  
18 And some of those are very obvious  
19 mistakes as well. Because JP doesn't know any  
20 more than we do what some of the securities are.  
21 Sometimes it says, if I don't know what it is,  
22 mark it at par, but it may actually be worth zero,  
23 and that's the reason why that number comes out so  
24 wrong, because these are so complicated  
25 securities.

Page 204

1 KING - HIGHLY-CONFIDENTIAL  
2 mortgage-backed securities that were also losing  
3 money, so we just put them in with those, and  
4 therefore, I didn't track -- even though I could,  
5 I didn't track what was a Lehman security versus  
6 what was a Barclays security. We just organized  
7 them for appropriate liquidation or retention.  
8 MR. HINE: OK, Mr. King, that is all  
9 the questions I have. I think one of my  
10 colleagues has some questions to ask you as  
11 well.  
12 (Recess)  
13 EXAMINATION BY  
14 MR. OXFORD:  
15 Q. Good afternoon, Mr. King. I  
16 introduced myself earlier on. My name is Neil  
17 Oxford. I represent the SIPA trustee for LBI.  
18 Following up on the examination by  
19 Mr. Hine, initially you testified about the  
20 portion of the 6.5 billion of mortgage-backed  
21 securities that Barclays ended up purchasing.  
22 Do you recall that?  
23 A. Yeah, yeah.  
24 MR. STERN: Wait a second.  
25 OK, OK.

Page 203

1 KING - HIGHLY-CONFIDENTIAL  
2 Q. OK.  
3 A. So they are worth a tremendous amount  
4 less.  
5 If you mean of those securities, that  
6 value, I think it was about -- we thought it was  
7 worth about 2 billion dollars or so. What we  
8 eventually ended up with, 2.2 I think, and we must  
9 have sold about -- the last time I was involved  
10 with it, it would have been about 60 percent, I  
11 think, or so.  
12 Q. Do you know if Barclays made money on  
13 those securities, the mortgage-backed securities?  
14 A. We lost money.  
15 Q. Do you know how much or --  
16 A. I don't remember.  
17 Q. Do you know if there has been any kind  
18 of assessment of how much money Barclays made or  
19 lost with respect to the mortgage-backed  
20 securities that it received from Lehman?  
21 A. No, never tried.  
22 Q. For the same reasons we talked about  
23 before, it would be difficult to do?  
24 A. No. It would actually be easy to do,  
25 just not useful. We had our own portfolio of

Page 205

1 KING - HIGHLY-CONFIDENTIAL  
2 Q. I just want to make sure I understand  
3 your testimony. So leaving aside for the moment  
4 the question of value, are you able to estimate  
5 what percentage of that 6.5 billion of  
6 mortgage-backed securities that we have been  
7 discussing that is represented on Exhibit 388-B,  
8 are you able to estimate what percentage of those  
9 mortgage-backed securities ended up in the hands  
10 of Barclays?  
11 MR. STERN: Objection to the form.  
12 Get out 388-B. And let's hear the question  
13 again.  
14 MR. OXFORD: Can you read it back.  
15 (Record read)  
16 A. Not accurately, and the reason for  
17 that is that we got the ultimate delivery of  
18 securities that Barclays received, first the  
19 subset of the ones that it expected to receive in  
20 the original repo, the ones that it got in the 10  
21 billion dollars of repo that it didn't expect to  
22 receive and the ones that it got as part of the  
23 settlement against the 7 billion dollars of cash.  
24 We actually received a lot of securities that we  
25 had -- that would have fallen into that category

Page 206	Page 207
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 that we had never seen before on -- ever.</p> <p>3 Q. And just so we have a clear record, by</p> <p>4 that category, you are pointing to --</p> <p>5 A. To the 6.56.</p> <p>6 Q. And by that category, you are also, I</p> <p>7 take it, referring to the total mortgage and</p> <p>8 mortgage-backed security reference in 388-B?</p> <p>9 A. Yes, yes. So -- and unfortunately, I</p> <p>10 can't -- I can't remember how many of the</p> <p>11 securities that we did receive were also part of</p> <p>12 this original list because there were ones that</p> <p>13 were in the repo facility that weren't also on the</p> <p>14 Lehman balance sheet or that were delivered by JP</p> <p>15 ultimately in lieu of the 7 billion dollars that</p> <p>16 weren't on this balance sheet and so I can't quite</p> <p>17 get back to a subset in my head of this, I'm</p> <p>18 afraid.</p> <p>19 Q. Let's try it this way, Mr. King, you</p> <p>20 said that under the repo, you received what you</p> <p>21 considered to be a value of approximately 1.5</p> <p>22 billion dollars worth of mortgage-backed</p> <p>23 securities, is that an accurate statement?</p> <p>24 MR. STERN: Objection to the form.</p> <p>25 A. I think that was in the original -- I</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 think that was of the original, of the original --</p> <p>3 the numbers that I can remember are, I always</p> <p>4 remember that 6.5. I remember thinking that that</p> <p>5 6.5 wasn't worth more than about 3.2 and that was</p> <p>6 both through crude estimate and steadily refined</p> <p>7 estimates. I think we ultimately concluded it was</p> <p>8 worth less.</p> <p>9 I remember that we, in the repo</p> <p>10 facility, I think there was 3 billion dollars or</p> <p>11 thereabouts which was roughly half of this that</p> <p>12 was in the expected repo -- in the Fed, supposedly</p> <p>13 in the Fed facility that we are about to receive</p> <p>14 and I remember thinking that was worth about 1.5</p> <p>15 billion.</p> <p>16 Q. That, just so I am clear, is in the</p> <p>17 pool of 32 billion?</p> <p>18 A. No, that was in what we thought was</p> <p>19 the pool of 50 that we were going to receive. I</p> <p>20 think that's right. And then what we ended up</p> <p>21 receiving was some of that and then some of this</p> <p>22 that we weren't expecting to receive and I seem to</p> <p>23 remember that being about 4.5 billion, using the</p> <p>24 same marks that were in here that we thought was</p> <p>25 worth about 2.2 billion.</p>
Page 208	Page 209
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. So the 4.5 billion, using the marks</p> <p>3 reflected in Exhibit 388-B that you believe is</p> <p>4 worth approximately 2.2 billion, was received</p> <p>5 under -- as part of both the 32 billion pool that</p> <p>6 you told Mr. Hine about?</p> <p>7 A. Yes.</p> <p>8 Q. Part of also the 10 billion pool?</p> <p>9 A. I think that's also right.</p> <p>10 Q. Was that also part of the JP Morgan</p> <p>11 settlement referred to as 7 billion cash?</p> <p>12 A. No, the JP settlement was more, we got</p> <p>13 1.25 -- all we got for that was 1.25 cash and then</p> <p>14 we got securities, I think we got about 2 billion</p> <p>15 dollars worth of securities that we had seen</p> <p>16 before and 2 billion dollars that we had -- that</p> <p>17 one I have forgotten, actually.</p> <p>18 Q. Just so we have a clear record, it is</p> <p>19 your understanding that Barclays, under the repo</p> <p>20 transaction that is constituted by the pool of 32</p> <p>21 billion of assets and the pool of 10 billion of</p> <p>22 assets, Barclays received -- using the marks in</p> <p>23 Exhibit 388-B -- approximately 4.5 billion of</p> <p>24 mortgage-backed securities which you believe is</p> <p>25 worth approximately half of that, is that</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 accurate?</p> <p>3 MR. STERN: Objection to the form of</p> <p>4 the question.</p> <p>5 Can you repeat it please. I don't</p> <p>6 know how that creates a clear record.</p> <p>7 MR. OXFORD: Please read it.</p> <p>8 (Record read)</p> <p>9 MR. STERN: Objection to the form.</p> <p>10 A. What I believe they are worth -- for</p> <p>11 one thing, what I believe they are worth now</p> <p>12 versus what I believed they were worth shortly</p> <p>13 thereafter may be a different thing and certainly</p> <p>14 market conditions were deteriorating, not</p> <p>15 improving. Most of those markets lost even more</p> <p>16 value going into the fourth quarter and of course</p> <p>17 there was no way for us to liquidate positions in</p> <p>18 advance of that.</p> <p>19 The 4.5, I just -- I cannot remember,</p> <p>20 I'm afraid, whether the 4.5 represented what we</p> <p>21 got in -- it certainly was at least the -- what</p> <p>22 you're calling, using the same -- we are using the</p> <p>23 same types of marks, the 4.5 was included in the</p> <p>24 32 and in the 10, but I can't remember whether it</p> <p>25 also included what was in the JP settlement. I</p>

<p style="text-align: right;">Page 210</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 just can't remember.</p> <p>3 Q. Separate and apart from any securities</p> <p>4 that Barclays received under the JP Morgan</p> <p>5 settlement or either side of the repo, the 32</p> <p>6 billion or 10 billion, to your knowledge,</p> <p>7 Mr. King, did Barclays receive any mortgage-backed</p> <p>8 securities from Lehman as part of the transaction</p> <p>9 consummated in September of 2008?</p> <p>10 MR. STERN: Objection to the form.</p> <p>11 You can answer.</p> <p>12 A. Could you repeat that, read that back</p> <p>13 to me.</p> <p>14 (Record read)</p> <p>15 MR. STERN: Again, objection to the</p> <p>16 form. Either side of the repo.</p> <p>17 A. Yeah, what do you mean by either side</p> <p>18 of the repo.</p> <p>19 MR. STERN: Why don't you just ask the</p> <p>20 repo. Aside from what you got --</p> <p>21 Q. Let me ask the question again. Aside</p> <p>22 from the repo transaction and aside from the</p> <p>23 settlement with JP Morgan, to your knowledge,</p> <p>24 Mr. King, did Barclays receive any mortgage-backed</p> <p>25 securities from Lehman?</p>	<p style="text-align: right;">Page 211</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. There was some mortgage-backed</p> <p>3 securities. Can I clarify, repeat something that</p> <p>4 I said earlier, of course.</p> <p>5 Q. Yeah, sure.</p> <p>6 A. Which is, unfortunately, people use</p> <p>7 mortgage-backed securities to mean more than just</p> <p>8 mortgage-backed securities. So if I answer that</p> <p>9 narrowly, I think the answer is approximately no.</p> <p>10 Using mortgage-backed securities to</p> <p>11 mean franchise -- franchise loans, manufactured</p> <p>12 housing, distressed credit cards, small</p> <p>13 business loans, whole business securitizations,</p> <p>14 the myriad of other distressed credit -- auto</p> <p>15 loans, auto receivables, all of that stuff,</p> <p>16 that's what people use that -- CDOs, CLOs,</p> <p>17 CSOs, that, unfortunately, that's what people,</p> <p>18 that line item on B, whichever it was, 388-B,</p> <p>19 the line item on 388-B and even our own</p> <p>20 category, broad category of what the principal</p> <p>21 mortgage trading group trades is all of that.</p> <p>22 There were securities of that nature</p> <p>23 that were in the list of unencumbered securities</p> <p>24 that we were expecting to receive. And some of</p> <p>25 them we did receive and some of them we haven't</p>
<p style="text-align: right;">Page 212</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 received.</p> <p>3 Q. OK, new topic, Mr. King.</p> <p>4 In your role with Barclays, in</p> <p>5 September of 2008, did you have responsibility</p> <p>6 for exchange-traded derivatives?</p> <p>7 MR. STERN: Objection to the form.</p> <p>8 You can answer, you can answer if you</p> <p>9 understand the question.</p> <p>10 Q. Let's try it this way, do you have an</p> <p>11 understanding of what the term "exchange-traded</p> <p>12 derivatives" is?</p> <p>13 A. Yes.</p> <p>14 Q. Can you give me that understanding?</p> <p>15 A. Exchange-traded derivatives are</p> <p>16 derivative contracts that are cleared through a</p> <p>17 clearing house and have a published closing price</p> <p>18 listed on an exchange and are traded through the</p> <p>19 exchange. So it is often easier to define them as</p> <p>20 they are not OTC derivatives. In other words,</p> <p>21 they are not over-the-counter derivatives.</p> <p>22 Q. Using your definition of</p> <p>23 exchange-traded derivatives, Mr. King, did you</p> <p>24 have responsibility for exchange-traded</p> <p>25 derivatives in your day-to-day role in Barclays in</p>	<p style="text-align: right;">Page 213</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 September of 2008?</p> <p>3 MR. STERN: I am going to object to</p> <p>4 the form. Neil, I think you might find it</p> <p>5 more productive to ask him what role, if</p> <p>6 any, he had in connection with</p> <p>7 exchange-traded derivatives. I think the</p> <p>8 way you formed the question makes it harder</p> <p>9 for him to answer.</p> <p>10 Q. Let's try the question that I asked.</p> <p>11 A. I don't have day-to-day responsibility</p> <p>12 for exchange-traded derivatives.</p> <p>13 Q. Did you have any responsibility for</p> <p>14 exchange-traded derivatives?</p> <p>15 MR. STERN: Objection to the form.</p> <p>16 A. As a result -- through the</p> <p>17 transaction, for the period of the acquisition</p> <p>18 period, I facilitated in assessing and risk</p> <p>19 managing the exposure to the exchange-traded</p> <p>20 derivatives that we had acquired through the</p> <p>21 purchase agreement. But that was definitely one</p> <p>22 that as soon as we were capable of pushing that</p> <p>23 back into the normal equities trading businesses,</p> <p>24 we did. We were mostly interested in closing out</p> <p>25 the positions as quickly as possible and actually,</p>

<p style="text-align: right;">Page 214</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 the only piece that I had any involvement in were</p> <p>3 the noncustomer exchange-traded derivatives</p> <p>4 positions.</p> <p>5 Q. What exchange-traded derivatives do</p> <p>6 you understand were purchased by Barclays?</p> <p>7 MR. STERN: Objection to the form.</p> <p>8 A. The line item in the purchase</p> <p>9 agreement said the exchange-traded derivatives</p> <p>10 businesses and -- if I remember correctly, and it</p> <p>11 therefore, we took on responsibility for</p> <p>12 everything -- the risk management after the 22nd,</p> <p>13 the risk management of all of the open positions</p> <p>14 that were then outstanding on any of the</p> <p>15 exchanges, any of the exchanges.</p> <p>16 Q. Are you able to give me a list of the</p> <p>17 exchanges you mean to reference when you say any</p> <p>18 of the exchanges?</p> <p>19 A. I couldn't give a full list to be</p> <p>20 honest with you. There was a dizzying array of</p> <p>21 them. I don't remember all of the positions that</p> <p>22 we -- all of the positions that I remember that we</p> <p>23 were managing were really equity derivative and</p> <p>24 equity -- equity vol. and equity cash derivative</p> <p>25 positions.</p>	<p style="text-align: right;">Page 215</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 I think the exchange prior to the</p> <p>3 22nd, the commodities exchange had already</p> <p>4 closed out the -- the commodities exchange had</p> <p>5 already closed out the commodities position and</p> <p>6 including the TBAs that were managed by Tom</p> <p>7 Hamilton. It was really most of that was on --</p> <p>8 a lot of that was on the clearing house for</p> <p>9 what was OCC which was the clearing house I</p> <p>10 think for NASDAQ and a variety of the other</p> <p>11 U.S. exchanges.</p> <p>12 MR. STERN: Equity vol.?</p> <p>13 THE WITNESS: Volatility.</p> <p>14 Q. Aside from the OCC, do you recall any</p> <p>15 other exchanges that you were given --</p> <p>16 A. The OCC is a clearing house for a</p> <p>17 number of exchanges, and yes, there were other</p> <p>18 clearing houses and there were other exchanges but</p> <p>19 I don't remember all of them. I really don't.</p> <p>20 Q. Do you remember any of them?</p> <p>21 MR. STERN: Objection to the form. He</p> <p>22 said he doesn't remember.</p> <p>23 A. I remember the New York Stock</p> <p>24 Exchange, for example, would be one, the London</p> <p>25 Stock Exchange. They were most of the stock</p>
<p style="text-align: right;">Page 216</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 exchanges.</p> <p>3 Q. Do you remember any other clearing</p> <p>4 organizations you were dealing with with respect</p> <p>5 to exchange-traded derivatives?</p> <p>6 A. We weren't really dealing with any of</p> <p>7 the clearing houses, just to clarify what our role</p> <p>8 was. In the same way as I described earlier, our</p> <p>9 job was to value and risk management.</p> <p>10 What I need -- the only exposure to</p> <p>11 the clearing houses that we had was in an</p> <p>12 effort to try to ascertain what were the list</p> <p>13 of open positions that we had acquired and the</p> <p>14 reason we had to do that was the Lehman, when</p> <p>15 Lehman had been -- had -- both Lehman Brothers</p> <p>16 Holdings and LBI and LBIE had become bankrupt.</p> <p>17 The derivative -- the risk reporting systems</p> <p>18 showed a combination of their OTC and</p> <p>19 exchange-traded derivatives and they couldn't</p> <p>20 isolate just their exchange-traded derivatives</p> <p>21 positions.</p> <p>22 So to estimate the list, we did have</p> <p>23 to speak to the exchanges to try and understand</p> <p>24 what the volatility of the margin that they</p> <p>25 were calling for was in an effort to estimate</p>	<p style="text-align: right;">Page 217</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 the open risk that they had. Quite literally,</p> <p>3 we looked that the margin went up when the</p> <p>4 market went down. We used that to estimate</p> <p>5 that we must have been long.</p> <p>6 But that was the reason for the dialog</p> <p>7 with them. There was obviously a separate</p> <p>8 dialog which was conducted via legal about the</p> <p>9 moving, the opening of new clearing accounts at</p> <p>10 the OCC and the others because there was a big</p> <p>11 discussion for prime brokerage, the client</p> <p>12 businesses, et cetera. So ours was a very</p> <p>13 narrow discussion with them as it pertained to</p> <p>14 identifying risk.</p> <p>15 Q. OK. Do you have an understanding,</p> <p>16 Mr. King, of the business deal between Barclays</p> <p>17 and Lehman with respect to exchange-traded</p> <p>18 derivatives?</p> <p>19 MR. STERN: Objection to the form.</p> <p>20 A. All I know is that I was asked to</p> <p>21 manage the -- and by manage, I largely mean close</p> <p>22 down as much of the outstanding exposure to the</p> <p>23 exchange-traded derivatives positions that had</p> <p>24 been -- that were still there and that we had the</p> <p>25 benefit of all and needed the collateral that had</p>



Page 218	Page 219
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 been posted to the clearing houses to support</p> <p>3 those open positions.</p> <p>4 Q. Was it your understanding that</p> <p>5 Barclays had stepped into the shoes of Lehman at</p> <p>6 the OCC and other clearing houses?</p> <p>7 MR. STERN: Objection to the form.</p> <p>8 A. I don't really -- I don't really know</p> <p>9 what -- I'm pretty naive in my understanding of</p> <p>10 the way -- of probably the way the transaction was</p> <p>11 executed or described. My understanding was that</p> <p>12 we were purchasing assets. Therefore, I would</p> <p>13 think of that as there would be specific things we</p> <p>14 were acquiring as opposed to we were stepping into</p> <p>15 the shoes of somebody.</p> <p>16 Q. I understand the distinction. Did you</p> <p>17 understand that Barclays was acquiring both short</p> <p>18 and long positions at the OCC and elsewhere?</p> <p>19 MR. STERN: Objection to the form.</p> <p>20 A. I couldn't generalize. The OCC</p> <p>21 positions were -- and short and long is an</p> <p>22 ambiguous term when we are talking about</p> <p>23 derivatives because by construction, there are --</p> <p>24 derivative is being long a call and short a put,</p> <p>25 the same thing. Therefore, when we first woke up</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 and realized we had exposure to the</p> <p>3 exchange-traded derivatives position, we didn't</p> <p>4 know whether we were long or short with respect to</p> <p>5 the U.S. equities market, for example.</p> <p>6 Did I think that we had the benefit of</p> <p>7 all of the collateral at the OCC and other</p> <p>8 exchanges in relation to the proprietary trading</p> <p>9 books, not the customer books, to support the open</p> <p>10 exchange-traded derivatives positions and were we</p> <p>11 risk managing the open exchange-traded</p> <p>12 derivatives? Yes, that's what I was doing.</p> <p>13 Q. From whom did you gain the</p> <p>14 understanding, Mr. King, that you just testified</p> <p>15 about, specifically that Barclays had the benefit</p> <p>16 all of the margin or rather to use your words the</p> <p>17 collateral at the OCC and other exchanges?</p> <p>18 MR. STERN: At this point, you may be</p> <p>19 intruding on privileged conversations. So I</p> <p>20 am going to talk to the witness about this.</p> <p>21 (Discussion held off the record.)</p> <p>22 MR. STERN: Going back on the record,</p> <p>23 I think that this definitely intrudes on</p> <p>24 privileged conversations and I am going to</p> <p>25 instruct the witness not to answer.</p>
Page 220	Page 221
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 MR. OXFORD: The witness has already</p> <p>3 answered --</p> <p>4 MR. STERN: I have instructed him not</p> <p>5 to answer. You can go ahead and ask the</p> <p>6 next question.</p> <p>7 MR. OXFORD: I think that is a waiver,</p> <p>8 but we can take it up at the appropriate</p> <p>9 time.</p> <p>10 MR. STERN: I don't think there is any</p> <p>11 waiver here. You think there is a waiver?</p> <p>12 MR. OXFORD: I think there might well</p> <p>13 be.</p> <p>14 MR. STERN: Where is the waiver?</p> <p>15 MR. OXFORD: The witness has already</p> <p>16 testified about his understanding.</p> <p>17 MR. STERN: By that you infer there</p> <p>18 has been a waiver of the attorney/client</p> <p>19 privilege?</p> <p>20 MR. OXFORD: There may well have been.</p> <p>21 MR. STERN: That's absolutely wrong.</p> <p>22 Absolutely wrong.</p> <p>23 MR. OXFORD: We can have that</p> <p>24 discussion at the appropriate time?</p> <p>25 MR. STERN: You never asked him about</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 conversations with counsel. Now you are</p> <p>3 trying to ask him about conversations with</p> <p>4 counsel.</p> <p>5 MR. OXFORD: No, I am not.</p> <p>6 MR. STERN: If you are trying in an</p> <p>7 under-handed way to create a waiver through</p> <p>8 these questions, then I am going to have to</p> <p>9 instruct the witness not to answer any more</p> <p>10 questions along these lines.</p> <p>11 If that's what you are saying, Neil,</p> <p>12 you think there has been a waiver of the</p> <p>13 attorney/client privilege, I am going to</p> <p>14 instruct him not to answer any more</p> <p>15 questions on this topic.</p> <p>16 MR. OXFORD: Jack, I am not trying to</p> <p>17 do anything under-handed as you well aware.</p> <p>18 The witness volunteered that he had an</p> <p>19 understanding that -- please let me --</p> <p>20 Jack --</p> <p>21 MR. STERN: You asked him what his</p> <p>22 understanding was. Then you asked him what</p> <p>23 the source of his understanding was. I then</p> <p>24 asked him off the record. So there has been</p> <p>25 no waiver.</p>

Page 222	Page 223
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Why don't you ask your next question,</p> <p>3 instead of engaging in this nonsense.</p> <p>4 MR. OXFORD: It was your nonsense that</p> <p>5 you began, Jack.</p> <p>6 MR. STERN: Just ask the next</p> <p>7 question, Neil.</p> <p>8 Q. OK. Mr. King, do you have any</p> <p>9 knowledge, other than knowledge gained through</p> <p>10 conversations with counsel, as to whether Barclays</p> <p>11 assumed any margin at the OCC or any other</p> <p>12 exchange?</p> <p>13 MR. STERN: I am going to instruct you</p> <p>14 not to answer.</p> <p>15 MR. OXFORD: What's the basis?</p> <p>16 MR. STERN: The basis is that you have</p> <p>17 already said that you think there has been a</p> <p>18 waiver on this subject. And by answering</p> <p>19 this question, you are intruding on the</p> <p>20 sources of his knowledge and I'm not going</p> <p>21 to allow him to answer when you're claiming</p> <p>22 that there has been a waiver.</p> <p>23 MR. OXFORD: I am asking him</p> <p>24 specifically questions --</p> <p>25 MR. STERN: This is a game that you</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 are playing and I am not going allow it.</p> <p>3 MR. OXFORD: I am not playing any</p> <p>4 game, Jack.</p> <p>5 MR. STERN: Yes, you are. First of</p> <p>6 all, this is a witness who has told you he</p> <p>7 didn't negotiate the agreement. He is not a</p> <p>8 lawyer. He is not here to interpret the</p> <p>9 agreement which is written in black and</p> <p>10 white. So this is nonsense.</p> <p>11 MR. OXFORD: It is not nonsense, I am</p> <p>12 entitled to --</p> <p>13 MR. STERN: It is unproductive for us</p> <p>14 to engage in this. Please ask a question.</p> <p>15 MR. OXFORD: If you would let me,</p> <p>16 Jack, I would do exactly that.</p> <p>17 MR. STERN: Ask a question. Do you</p> <p>18 have a question?</p> <p>19 MR. OXFORD: Yeah, I've got lots and</p> <p>20 lots of them.</p> <p>21 MR. STERN: Go ahead.</p> <p>22 Q. Did you have any understanding,</p> <p>23 Mr. King, of the value of the margin at the OCC --</p> <p>24 let me try that one again.</p> <p>25 Do you have an understanding of,</p>
Page 224	Page 225
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Mr. King, of the value of LBI's margin at the OCC</p> <p>3 as of close of business on the 19th of September?</p> <p>4 MR. STERN: I am going to instruct you</p> <p>5 not to answer.</p> <p>6 MR. OXFORD: Off the record.</p> <p>7 MR. STERN: You have already told --</p> <p>8 you have already said by asking a question</p> <p>9 about his understanding, that gave rise to a</p> <p>10 waiver. And if that's your position, I am</p> <p>11 going to instruct him not to answer.</p> <p>12 MR. OXFORD: Can we go off the record?</p> <p>13 MR. STERN: I am not going off the</p> <p>14 record.</p> <p>15 MR. OXFORD: I would like to go off</p> <p>16 the record and see if we can --</p> <p>17 MR. STERN: No, I want the next</p> <p>18 question.</p> <p>19 MR. OXFORD: Let's go off the record.</p> <p>20 MR. STERN: No, I am not going off the</p> <p>21 record.</p> <p>22 MR. OXFORD: I am going off the</p> <p>23 record. Please come out outside and talk to</p> <p>24 me.</p> <p>25 MR. STERN: I am not going to speak to</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 you off the record. Let's have the next</p> <p>3 question. Let's complete this deposition.</p> <p>4 MR. OXFORD: I want to complete the</p> <p>5 deposition as well, Jack.</p> <p>6 MR. STERN: Ask the next question.</p> <p>7 MR. OXFORD: Jack, I will be back in</p> <p>8 two minutes. If you would like to discuss</p> <p>9 it off the record, please do so.</p> <p>10 MR. STERN: I want your next question</p> <p>11 or we are leaving. If you are terminating</p> <p>12 the deposition, we are leaving.</p> <p>13 MR. OXFORD: I am not terminating --</p> <p>14 MR. STERN: This is a busy executive.</p> <p>15 Ask a question. Let's finish the</p> <p>16 deposition.</p> <p>17 MR. OXFORD: Let's mark this.</p> <p>18 (Exhibit 392-B, e-mail dated</p> <p>19 Wednesday, September 17, 2008 at 19:14:24</p> <p>20 marked for identification, as of this date.)</p> <p>21 Q. Mr. King, I have handed you what I</p> <p>22 have marked as Exhibit 392. Would you take a</p> <p>23 moment to review that and let me know when you</p> <p>24 have had a chance to do so.</p> <p>25 A. OK.</p>

Page 226

1 KING - HIGHLY-CONFIDENTIAL  
2 Q. Do you recall seeing this document  
3 before, sir?  
4 A. No. Again, I'm copied on the -- a  
5 party to the e-mail exchange.  
6 Q. Right. In fact, you wrote some of the  
7 e-mail exchange.  
8 A. I wrote some of the e-mail exchange,  
9 so it is wrong of me to say that I don't recognize  
10 it, but I don't -- I haven't seen this since it  
11 was originally typed.  
12 Q. You see in the second chain down, you  
13 write to Patrick Clackson and James Walker on 17th  
14 of September. Do you see that, at 10 past 8 in  
15 the morning?  
16 A. Yes, yes.  
17 Q. "The contracts are exchange-traded so  
18 they would seem to be captured by the definitions  
19 within purchased assets. Think it seems to be  
20 about 3 billion gross." Do you see that?  
21 A. Yeah, yeah.  
22 Q. Can you explain what you meant when  
23 you wrote that to Mr. Clackson, please.  
24 A. 17th was when?  
25 Q. 17th was the Wednesday.

Page 228

1 KING - HIGHLY-CONFIDENTIAL  
2 if I have to interpret what he was saying because  
3 I don't remember this traffic at all. The only  
4 excluded assets as I remember them -- the only  
5 construct of excluded assets that I have got is  
6 the thing that we talked about earlier which was  
7 the 3 billion dollars or so of the RMBS assets.  
8 Q. By that you mean the mortgage-backed  
9 securities?  
10 A. Yeah, yeah. That's the only thing I  
11 remember on excluded assets.  
12 Q. Mr. King, is it a fair interpretation  
13 of your e-mail to Mr. Clackson that you are  
14 attempting to interpret the asset purchase  
15 agreement?  
16 MR. STERN: Objection to the form.  
17 A. My original e-mail says -- Patrick's  
18 finishing sentence seems to dovetail to mine at  
19 the bottom which is, I am asking him, can you  
20 think of any securities that would be good  
21 collateral to the Fed facility other than the  
22 securities that I excluded. And he says to me,  
23 The only excluded assets are the ones that you  
24 excluded, and that's referring to assets that  
25 might have turned up in the repo facility. And by

Page 227

1 KING - HIGHLY-CONFIDENTIAL  
2 A. I don't really -- I don't remember.  
3 MR. STERN: This document doesn't have  
4 a Bates stamp on it. Can you explain why  
5 that is, Neil?  
6 MR. OXFORD: I think it is how you  
7 produced it to me, Jack.  
8 MR. STERN: Without a Bates stamp?  
9 MR. OXFORD: I believe so. I think we  
10 have had that problem at a few of our  
11 depositions. I'm not quite sure why they  
12 are produced like that, but they are.  
13 Q. Mr. King, Mr. Clackson writes back to  
14 you, he says, "The only excluded assets are the  
15 ones you excluded. Nothing else. So no other  
16 collateral." Do you see that?  
17 A. Yeah.  
18 Q. Do you have an understanding of what  
19 Mr. Clackson -- withdrawn.  
20 Do you have an understanding of what  
21 Mr. Clackson meant when he wrote that to you?  
22 A. He -- the only assets that I excluded  
23 were the ones that we discussed earlier. That's  
24 the only thing that I could -- so he seems to be  
25 reiterating -- that's the only thing that I can --

Page 229

1 KING - HIGHLY-CONFIDENTIAL  
2 there, I am using to assets to mean securities.  
3 They are on 388-B, there is a line  
4 item which is called "Total Derivatives and  
5 Other Contracts" on the balance sheet and I  
6 remember -- I can't remember piece by piece,  
7 but I remember at the time wondering, well,  
8 what are derivatives. And unfortunately, these  
9 definitions are -- these descriptions are bad  
10 descriptions because they could, you know, they  
11 are being used by a business to colloquially  
12 describe something there. It says, "Total  
13 derivatives and other contracts, 4.838  
14 billion," and I don't remember what I was  
15 concluding, but I am pointing out that we are  
16 trying to show that we know with the future --  
17 I understand we are purchasing them which  
18 highlights that I am not -- I don't think I am  
19 interpreting. I think I am asking.  
20 From what I understand, they are not  
21 in the line item called "derivatives" on the  
22 balance sheet and that's the one that I am  
23 pointing back to on 390.  
24 So you can see, again, I think most of  
25 what I am trying to do here is develop a

Page 230	Page 231
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 population of risk that we need to value and</p> <p>3 risk manage. But I -- but I am sorry, that one</p> <p>4 I don't -- that may have been one of many</p> <p>5 such -- sort of many dialogs that were going on</p> <p>6 at that time. I don't really remember the</p> <p>7 details at this point. Also it was on the</p> <p>8 17th, again, which I think is an early, it is</p> <p>9 on Wednesday the 17th, rather than Friday or</p> <p>10 something, so it is -- I just don't remember</p> <p>11 it.</p> <p>12 Q. Handing you, Mr. King, what has</p> <p>13 previously been marked as Exhibit I. I am not</p> <p>14 going to ask you about the whole of the document,</p> <p>15 but if you could take a flip through it and let me</p> <p>16 know whether you have seen this before, please.</p> <p>17 A. This is an execution copy of the asset</p> <p>18 purchase agreement, so no, I have not seen this</p> <p>19 before. I at some point, because you asked me --</p> <p>20 earlier I was asked about the one that I provided</p> <p>21 some comments to the purchase agreement, so I did</p> <p>22 see a draft of some or all of it -- I don't</p> <p>23 remember -- I'm not sure I ever saw all of it or</p> <p>24 at least I never paid attention to all of it. I</p> <p>25 must have seen a draft, but I have never seen</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 execution copies, so I don't think I have them.</p> <p>3 Q. You see an execution copy on the front</p> <p>4 to be dated September 16, 2008, correct?</p> <p>5 A. Yes, yes.</p> <p>6 Q. If you could have quickly in front of</p> <p>7 you 302A which is marked by Mr. Hine.</p> <p>8 A. That's the e-mail I was alluding to.</p> <p>9 Q. Do you see that you are referring the</p> <p>10 e-mail that is dated 17th of September, correct,</p> <p>11 sir?</p> <p>12 A. Right.</p> <p>13 Q. You see that is dated one day after</p> <p>14 the asset purchase agreement appears to be dated?</p> <p>15 A. That's what I said. I don't really</p> <p>16 understand -- I don't even know whether that was</p> <p>17 me -- I have no recollection of the -- I have no</p> <p>18 recollection of the signing of the agreement on</p> <p>19 the Tuesday. It wasn't really germane to what we</p> <p>20 were doing. I am not part of the negotiations.</p> <p>21 I know there were various</p> <p>22 modifications and revisions to it over time</p> <p>23 because I was told about them from time to</p> <p>24 time. So I don't actually know whether on this</p> <p>25 302A may well have been -- I can't see how I</p>
Page 232	Page 233
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 could have gotten hold of an execution copy</p> <p>3 because it is a signed copy and I may well have</p> <p>4 happened to have got back on Wednesday the</p> <p>5 17th, looking at a copy of a draft version of</p> <p>6 this from prior to here. I just have no</p> <p>7 recollection -- just the fact that the</p> <p>8 sequencing is Wednesday the 17th is after the</p> <p>9 signed copy on the 16th, I don't know that I am</p> <p>10 copy -- I don't know that I am commenting on</p> <p>11 this. I might be commenting on a draft from</p> <p>12 the same day or an earlier day or something.</p> <p>13 Q. I understand. Can you turn to page 6,</p> <p>14 please, of what I have marked as Exhibit I. And</p> <p>15 you see there is a heading about the middle of the</p> <p>16 page that begins "Purchased Assets." Do you see</p> <p>17 that?</p> <p>18 A. Yup.</p> <p>19 Q. Can you take a moment to read the</p> <p>20 definition of "Purchased Assets" and I am going to</p> <p>21 ask you in particular about subsection D.</p> <p>22 A. Yeah.</p> <p>23 Q. Let me know when you have done that,</p> <p>24 please.</p> <p>25 A. Right.</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. Is that -- reading that section, sir,</p> <p>3 does that refresh your recollection as to what you</p> <p>4 were reviewing when you wrote to Mr. Clackson in</p> <p>5 the exhibit that I have just marked?</p> <p>6 A. Sorry, on this one.</p> <p>7 Q. The exhibit I marked is 392-B, sir.</p> <p>8 A. Yeah, I understand.</p> <p>9 Not particularly.</p> <p>10 Q. In reading paragraph D under</p> <p>11 "Purchased Assets," do you see any reference to --</p> <p>12 do you see any reference to that margin at the OCC</p> <p>13 or other exchanges?</p> <p>14 MR. STERN: Objection to the form. So</p> <p>15 it in D -- specifically does it reference</p> <p>16 margin, is that --</p> <p>17 Q. Yes, is there anything in D that</p> <p>18 references margin or would be interpreted by you</p> <p>19 to encompass the margin at OCC or elsewhere?</p> <p>20 MR. STERN: Objection to the form.</p> <p>21 A. The idea -- an exchange-traded</p> <p>22 derivative -- an exchange -- if an</p> <p>23 exchange-traded -- if one is an exchange-traded</p> <p>24 derivative, it is a peculiar concept in the</p> <p>25 absence of any construction of collateral against</p>

Page 234

1 KING - HIGHLY-CONFIDENTIAL

2 it, I mean an exchange -- if I acquired an  
3 exchange-traded derivative, what have I got? I  
4 have just got a contract, but at what?

5 You know, is it -- because it is every  
6 day, it is collateralized. So the  
7 exchange-traded derivative -- I could easily  
8 read exchange-traded derivatives here to mean  
9 the exposure of the exchange-traded derivatives  
10 and the collateral supporting them.

11 Q. Do you consider the exchange-traded  
12 derivative and the margin to be the same thing,  
13 sir, or different?

14 MR. STERN: Objection to the form.

15 A. Margin is posted -- I don't know. I  
16 mean, I never -- you know, the exchange-traded  
17 derivatives -- the way the OCC -- if the OCC --  
18 the OCC has a number of contracts and it has some  
19 collateral accounts that are supporting the  
20 exchange-traded derivative positions. It is very  
21 difficult to separate them because every day, the  
22 contracts go up in value or down in value. Some  
23 of the -- if they go down in value, that consumes  
24 margin.

25 Q. Is that true for long positions as

Page 235

1 KING - HIGHLY-CONFIDENTIAL

2 well as short positions, sir?

3 MR. STERN: Objection to the form.

4 A. Yes, again, back to a long put  
5 position or a long position that goes down in  
6 value consumes margin. A short position that --  
7 where the underlying goes down in value increases  
8 margin. I don't really know how to separate them.  
9 And I have to say that I didn't particularly dwell  
10 on it afterwards. I just knew if we had open  
11 exchange-traded derivative positions and we  
12 ignored them, they were at risk of consuming all  
13 the margin. And at the some point, the exchange  
14 would close us out.

15 (Exhibit 393-B, e-mail dated Friday,  
16 19 September 2008 at 00:57:45 marked for  
17 identification, as of this date.)

18 Q. Mr. King, I have put before you a  
19 one-page e-mail that I have marked as Exhibit  
20 393-B. Could you take a quick look at it and let  
21 me know when you have done so, please.

22 A. Right. Yeah.

23 Q. Do you recall this document, sir?

24 A. No.

25 Q. It appears to be an e-mail exchange

Page 236

1 KING - HIGHLY-CONFIDENTIAL

2 between you and Mr. Clackson and Mr. Mahon,  
3 correct?

4 A. Yes.

5 Q. And initially you write to  
6 Mr. Clackson on September 18 at around 8:30 in the  
7 evening, you say, "Why don't we add the initial  
8 margin on the repos," and then a few hours later,  
9 you say, "Sorry, I meant exchange and clearing  
10 houses."

11 A. Right.

12 Q. Can you tell me what you mean when you  
13 wrote those words, sir?

14 MR. STERN: Objection to the form.

15 A. I don't remember the -- is that at  
16 1:30 a.m.?

17 Q. I believe so. The document was  
18 produced to me by Barclays. I don't know whether  
19 that is a GMT Time or Eastern Standard Time.  
20 Perhaps Jack could enlighten us.

21 A. One is 12:57 GMT on Friday.

22 MR. STERN: What is the question? The  
23 question is what he meant when he wrote  
24 those two sentences to Mr. Clackson? I  
25 think he has answered that. Is there

Page 237

1 KING - HIGHLY-CONFIDENTIAL

2 another question?

3 Q. Sure, let's try it again.

4 Do you know what you meant when you  
5 wrote those two sentences to Mr. Clackson?

6 A. Not without a context.

7 Q. What context would you need to answer  
8 this question, sir?

9 MR. STERN: Objection to the form.

10 A. If I write a sentence like, Why don't  
11 we add the original margin on the repos, I don't  
12 know what I am talking about adding it to. Both  
13 Patrick and Paolo are on the accounting side of  
14 the firm. Paolo was at Lehman. So I don't know  
15 whether -- without knowing what the starting point  
16 of this is, this may have had to do a, you know,  
17 an aggregate asset value question or -- I don't  
18 know. I actually don't know.

19 Q. Could you be suggesting to  
20 Mr. Clackson that the initial margin at the  
21 exchanges and clearing house be added to the  
22 transaction between Barclays and Lehman?

23 MR. STERN: Objection to the form.

24 A. I find that very unlikely since I  
25 wasn't part of that discussion. But I don't know.

Page 238	Page 239
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. Mr. Clackson replies, "Agreed. Paolo</p> <p>3 is saying the right stuff." Do you have an</p> <p>4 understanding of what Mr. Clackson said when he</p> <p>5 wrote that to you?</p> <p>6 A. I assume he is referring to -- I mean,</p> <p>7 I would only know one Paolo that's even remotely</p> <p>8 associated with this transaction. So other than</p> <p>9 that, I don't know, no.</p> <p>10 MR. STERN: I'll note again that my</p> <p>11 understanding is that we produced documents</p> <p>12 with Bates numbers except for the Felder</p> <p>13 documents that we produced at the very</p> <p>14 beginning. So again, I don't know why you</p> <p>15 are marking documents without Bates numbers</p> <p>16 and I will note that for the record and we</p> <p>17 will investigate it after the deposition.</p> <p>18 MR. OXFORD: Sure, I would appreciate</p> <p>19 if you would.</p> <p>20 MR. STERN: I will investigate it with</p> <p>21 you because I don't know where you are</p> <p>22 getting things if they are not Bates</p> <p>23 numbered.</p> <p>24 MR. OXFORD: It is my information that</p> <p>25 we pulled these directly from your</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 production, Jack.</p> <p>3 MR. STERN: I don't think that's</p> <p>4 accurate, but we will talk about it after</p> <p>5 this.</p> <p>6 (Exhibit 394-B, e-mail dated 9/19/2008</p> <p>7 at 9:41 p.m. with attachment marked for</p> <p>8 identification, as of this date.)</p> <p>9 Q. Mr. King, you have in front of you</p> <p>10 what I have marked as Exhibit 394-B.</p> <p>11 A. Right.</p> <p>12 Q. And I am going to ask you primarily</p> <p>13 about the e-mail rather than the attachment,</p> <p>14 though of course you are welcome to take such time</p> <p>15 as you need to look at the attachment as well.</p> <p>16 A. Right.</p> <p>17 Q. I note you are directing your</p> <p>18 attention to Exhibit 393-B. I don't have any more</p> <p>19 questions for you at this time, so if you could</p> <p>20 focus your attention on 394-B, that would probably</p> <p>21 be most expeditious.</p> <p>22 A. Right.</p> <p>23 Q. Do you recall this document, sir?</p> <p>24 A. No.</p> <p>25 Q. No? You see that Mr. Yang sends to</p>
Page 240	Page 241
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 you and others a spreadsheet that appears to be</p> <p>3 titled, "Top Derivatives Position By Position" --</p> <p>4 A. Right.</p> <p>5 Q. "9/18/08." Do you have an</p> <p>6 understanding of what that spreadsheet is, sir?</p> <p>7 A. I don't remember it, sorry.</p> <p>8 Q. I don't need to ask you anything else</p> <p>9 on that. If you could put that to one side</p> <p>10 please.</p> <p>11 This has previously been marked as</p> <p>12 Exhibit 95-B. I'll save you a little time,</p> <p>13 Mr. King, your name is not actually on this</p> <p>14 e-mail. If you could take a look at the e-mail</p> <p>15 and the attachment and see whether you have</p> <p>16 seen this document before, please.</p> <p>17 MR. STERN: Read through all the</p> <p>18 e-mails, please.</p> <p>19 Q. Yeah, I am sorry, I meant to say you</p> <p>20 are not on the ultimate e-mail chain, but you do</p> <p>21 appear earlier down the e-mail chain. So I have</p> <p>22 some questions for you about that.</p> <p>23 MR. STERN: Read them all, starting</p> <p>24 from the bottom.</p> <p>25 THE WITNESS: It is essentially the</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 same as the previous one.</p> <p>3 MR. STERN: It could be.</p> <p>4 A. Yup.</p> <p>5 Q. I would like to direct your attention</p> <p>6 first to the third page of this exhibit, sir.</p> <p>7 Near the top of the page, at 11:18 a.m. on Sunday,</p> <p>8 September 21, you write to a group of people</p> <p>9 regarding "Net Long Options, 9/18" and you address</p> <p>10 it to somebody who appears to be called Lily</p> <p>11 McInemey. Do you see that?</p> <p>12 A. Yup.</p> <p>13 Q. And you say, "Lily, what I am trying</p> <p>14 to be sure about is that we have a clear list of</p> <p>15 exchange-traded positions (options, futures, et</p> <p>16 cetera) as of Friday close. Need this today.</p> <p>17 Very important. Also, I need to know what the net</p> <p>18 margin is at the relevant clearing house and</p> <p>19 whether that reflects the Friday close marks.</p> <p>20 What is your number. Either Tim or I will call</p> <p>21 you."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you recall this document, sir?</p> <p>25 A. I don't. I remember a lot of the</p>

Page 242	Page 243
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 dialog around this time, but I don't remember</p> <p>3 this. I don't remember the -- this particular</p> <p>4 exchange.</p> <p>5 Q. You do or you don't?</p> <p>6 A. I don't remember this particular</p> <p>7 exchange, but I remember a lot of the things that</p> <p>8 were going on at this time.</p> <p>9 Q. Can you tell me, please, why you are</p> <p>10 requesting this information from Lily?</p> <p>11 A. Yeah, I don't remember who Lily was</p> <p>12 actually, so I'm not sure why I am requesting it</p> <p>13 from Lily in particular. If you remember what</p> <p>14 I -- further down at the bottom, it says, it is</p> <p>15 from me to Gerard Reilly, "Don't forget, we only</p> <p>16 want the exchange-traded options positions, not</p> <p>17 the OTC."</p> <p>18 I don't -- I actually, for some reason</p> <p>19 in my head, I don't know if I described this</p> <p>20 earlier, I thought about the exchange-traded</p> <p>21 positions as not really starting work on those</p> <p>22 until after the Monday. But evidently, I</p> <p>23 started work on them towards the end of that</p> <p>24 week and so that's just a -- my -- if this</p> <p>25 helps to clarify that it must have been earlier</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 on that I started to become aware of it, and so</p> <p>3 I -- and that may have come out of the earlier</p> <p>4 comments about the asset purchase agreement</p> <p>5 when I started to think about the</p> <p>6 exchange-traded derivatives position.</p> <p>7 There have been a number of things</p> <p>8 that have been happening simultaneously. Gary</p> <p>9 Romain started to put a balance sheet together.</p> <p>10 My increasing role on managing the overall risk</p> <p>11 of the transaction -- sorry, overall risk of</p> <p>12 all of the assets that were coming on to the</p> <p>13 balance sheet, and Gary started to put the</p> <p>14 acquisition balance sheet together.</p> <p>15 And what we had discovered was that we</p> <p>16 had no way of producing -- I alluded to this</p> <p>17 earlier -- we had no way of producing risk for</p> <p>18 just the exchange-traded derivatives positions.</p> <p>19 In fact, Barclays wasn't capable of booking the</p> <p>20 exchange-traded derivatives positions. We</p> <p>21 didn't have the technology systems. One of the</p> <p>22 things we were acquiring from Lehman was the</p> <p>23 businesses -- Jerry Dineen's and I think some</p> <p>24 of these people were Jerry Dineen's people</p> <p>25 associated with the equities trading business</p>
Page 244	Page 245
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 and this is one of the few occasions where we</p> <p>3 really had to use a combination of Lehman</p> <p>4 people and Barclays people to ascertain the</p> <p>5 risk and the values.</p> <p>6 Unfortunately, the Lehman people had</p> <p>7 this amalgam of OTC and exchange-traded</p> <p>8 derivatives position in their risk system, so</p> <p>9 they couldn't tell us just the exchange-traded</p> <p>10 derivatives positions. I remember -- and I</p> <p>11 think this e-mail may be the start of it, and</p> <p>12 it probably was over that weekend, that I</p> <p>13 worked out that I could estimate the risk of</p> <p>14 the exchange-traded derivatives positions by</p> <p>15 the change in the margin. What I was saying to</p> <p>16 you earlier about the fact that it is</p> <p>17 impossible to separate margin from an</p> <p>18 exchange-traded derivative position.</p> <p>19 The change in the margin, which is the</p> <p>20 cash posted plus the current market value,</p> <p>21 liquidation value of the, the in-the-moneyness</p> <p>22 of the contract -- sorry, the mark on the</p> <p>23 contract -- if you added all of that up for a</p> <p>24 book, all of that up on the OCC, you would know</p> <p>25 whether it was moving -- whether your book was</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 overall long or short with respect to an</p> <p>3 underlying market. And I think that's what I</p> <p>4 am starting to do here with this dialog.</p> <p>5 So it is a combination of, one,</p> <p>6 looking at Gary Romain's balance sheet and saying,</p> <p>7 hold on, Gary actually has OCC clearing house</p> <p>8 money on the balance sheet as an asset that we are</p> <p>9 acquiring, is that a volatile number.</p> <p>10 My responsibility is to advise the</p> <p>11 firm whether it has volatility, whether it has</p> <p>12 risk, economic risk. So it has the OCC. In</p> <p>13 fact, I don't know which exhibit it was which</p> <p>14 had the first draft of the balance sheet, but</p> <p>15 that was dated the first draft that you showed</p> <p>16 me that was on the 22nd, wasn't it? I think it</p> <p>17 was on the 22nd.</p> <p>18 So around that time, the balance sheet</p> <p>19 was becoming available that has the clearing</p> <p>20 house collateral on it. And we were trying to</p> <p>21 ascertain the risk before Lehman -- before we</p> <p>22 were able to actually book the trades because</p> <p>23 Barclays couldn't book the trades. So we had</p> <p>24 to do it by estimating change in the margin at</p> <p>25 the OCC.</p>

Page 246	Page 247
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 MR. STERN: He is referring to 390-B.</p> <p>3 A. Right. So this has -- does this have</p> <p>4 the OCC on it? Maybe it doesn't -- derivatives,</p> <p>5 it says derivatives, exchange-traded options. So</p> <p>6 that's where -- that's I think what was going on</p> <p>7 here, that we had to start to try to work out what</p> <p>8 we got. We didn't know what we had got at this</p> <p>9 point.</p> <p>10 Q. Mr. King, over the weekend of the 20th</p> <p>11 and 21st of September, did you come to a</p> <p>12 conclusion as to the risk in the OCC positions?</p> <p>13 A. No. We -- not -- again, as I said</p> <p>14 earlier in response to another question that</p> <p>15 suggested that I came to a conclusion, a</p> <p>16 conclusion we managed to come to several days or</p> <p>17 weeks later. What we were able to determine was</p> <p>18 that we had a net open position.</p> <p>19 On the Friday morning, we had -- I</p> <p>20 mean, add the pieces up on Friday morning --</p> <p>21 this was an incredible time. On the Friday</p> <p>22 morning, we wake up to find out that we are</p> <p>23 long 8 billion dollars of cash equities; that</p> <p>24 we have just lent money against, among other</p> <p>25 things, an 8 billion dollar portfolio of cash</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 equities. Then we realize that, you know, we</p> <p>3 have open exchange-traded derivatives positions</p> <p>4 that are live that aren't closed out, as -- I</p> <p>5 find out Tim Stack used to be in prime</p> <p>6 brokerage. You start to see we could get the</p> <p>7 OCC information statements for Friday, this is</p> <p>8 from Francis Pearn, Francis. We can get the</p> <p>9 OCC statements for Friday and determine if</p> <p>10 these contracts are still outstanding. We</p> <p>11 didn't know whether or not the contracts that</p> <p>12 we had were outstanding, how substantial they</p> <p>13 were. Early in that -- and the equity markets</p> <p>14 are closed. The equity markets are closed.</p> <p>15 MR. STERN: What do you mean by cash</p> <p>16 positions?</p> <p>17 A. Cash, people refer to cash equities to</p> <p>18 refer to the -- it, you know, to the individual</p> <p>19 equity publicly traded equity positions, Barclays</p> <p>20 stock, IBM stock.</p> <p>21 MR. STERN: I see.</p> <p>22 A. AT&amp;T stock. That's what I mean by</p> <p>23 cash equities, they are exchange-traded. They are</p> <p>24 exchange-traded cash instruments.</p> <p>25 This derivatives position was a</p>
Page 248	Page 249
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 mixture of index derivatives, i.e., referencing</p> <p>3 S&amp;P, you know, mostly S&amp;P and also individual</p> <p>4 stock equities, so it was IBM, so it was perfectly</p> <p>5 reasonable what -- and Lehman had a very active</p> <p>6 equity derivative business which means they may</p> <p>7 well be hedging equity derivative positions with</p> <p>8 cash equities. So it was a perfectly reasonable</p> <p>9 thing for them to assert that they were -- why on</p> <p>10 earth did they have this 8 billion dollar long</p> <p>11 cash equities position. Well, it might be because</p> <p>12 it is hedging our equity derivative position.</p> <p>13 That turned out not to be true or at least the</p> <p>14 index derivative position was even larger than the</p> <p>15 single named derivative position, so the net delta</p> <p>16 on the exchange-traded derivatives position was</p> <p>17 long about 3 billion dollars.</p> <p>18 And what we were trying to get here</p> <p>19 was a handle on what that risk was.</p> <p>20 Q. I appreciate that answer. I think it</p> <p>21 may set a record for longest answer in these</p> <p>22 depositions.</p> <p>23 A. It was a difficult problem.</p> <p>24 Q. I'm sure it was.</p> <p>25 At any time did you come to a</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 conclusion as to the risk of Lehman --</p> <p>3 withdrawn.</p> <p>4 At any time, Mr. King, did you have</p> <p>5 come to a conclusion as to the risk, if any,</p> <p>6 that Barclays was assuming by taking on the</p> <p>7 exchange-traded derivatives positions of</p> <p>8 Lehman?</p> <p>9 MR. STERN: Can I hear the question</p> <p>10 again.</p> <p>11 (Record read)</p> <p>12 MR. STERN: Objection, asked and</p> <p>13 answered.</p> <p>14 Go ahead, you can answer again.</p> <p>15 A. Didn't I just answer that?</p> <p>16 Q. No.</p> <p>17 MR. STERN: I think you did, but you</p> <p>18 can try again.</p> <p>19 A. I can try it again with another very</p> <p>20 long answer.</p> <p>21 Q. Can you try it with a short answer?</p> <p>22 MR. STERN: No --</p> <p>23 A. No, I didn't come to a conclusion. We</p> <p>24 started to manage it and eventually closed out all</p> <p>25 the exchange-traded derivatives positions.</p>



Page 250	Page 251
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. Did Barclays undertake any analysis,</p> <p>3 to your knowledge, at any time as to whether</p> <p>4 Barclays made a net gain or loss on the</p> <p>5 exchange-traded derivatives positions they assumed</p> <p>6 from Lehman?</p> <p>7 MR. STERN: Objection to the form.</p> <p>8 A. No.</p> <p>9 MR. STERN: Let me hear it again.</p> <p>10 (Record read)</p> <p>11 MR. STERN: Objection to the form.</p> <p>12 Try to answer that. "At any time."</p> <p>13 A. Do you -- do you mean over the life of</p> <p>14 the exposure to the exchange-traded derivatives</p> <p>15 positions?</p> <p>16 Q. Yes, at any time from September 19 to</p> <p>17 date? Or I should say, September 19, 2008.</p> <p>18 A. I don't think we ever thought we</p> <p>19 isolated it in that way.</p> <p>20 Q. You asked Lily in what I have marked</p> <p>21 and has been marked previously as 95-B what the</p> <p>22 net margin was at the relevant clearing house. Do</p> <p>23 you recall ever receiving an answer to that</p> <p>24 request?</p> <p>25 A. I don't remember receiving the answer</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 specifically. The reason for wanting to know, as</p> <p>3 I said, was, one, to go into the -- that it would</p> <p>4 be relevant to the acquisition balance sheet as a</p> <p>5 purchased asset. And two, to assess the change in</p> <p>6 it so we could estimate the risk.</p> <p>7 Q. When you say net margin, Mr. King,</p> <p>8 what do you mean by net margin?</p> <p>9 A. The margin posted at the exchange, at</p> <p>10 the clearing house.</p> <p>11 Q. Is it net of something?</p> <p>12 A. The long/short positions.</p> <p>13 Q. I am sorry, can you explain that a</p> <p>14 little further.</p> <p>15 A. I think --</p> <p>16 MR. STERN: Objection to the form.</p> <p>17 A. The OCC referred to net -- I think it</p> <p>18 was an OCC -- I think originally it was an OCC</p> <p>19 description which was cash, securities and PV</p> <p>20 on -- the present value on the derivative</p> <p>21 positions, that's the net.</p> <p>22 Q. And the answer you just gave me is</p> <p>23 what you understand to be the OCC's definition of</p> <p>24 the term net margin, sir?</p> <p>25 MR. STERN: Objection to the form.</p>
Page 252	Page 253
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. No, what I said was that is how I use</p> <p>3 it and I remember -- I seem to remember it</p> <p>4 being -- the genesis of it was it was actually an</p> <p>5 OCC term. Whether it is a defined term or not, I</p> <p>6 don't know.</p> <p>7 Q. If you can go to the front page of</p> <p>8 Exhibit 95-B, sir. You're not on the chain at</p> <p>9 this stage, but if you could just read the first</p> <p>10 e-mail that begins, "Craig Jones provided the OCC</p> <p>11 statements as of September 22 for the LBI 074</p> <p>12 account."</p> <p>13 A. Yeah.</p> <p>14 Q. Do you ever recall learning the</p> <p>15 information that's contained in that paragraph?</p> <p>16 A. I -- at various times, I knew the</p> <p>17 balances of the margin that was in the OCC because</p> <p>18 it was what we were using, one, to provide to Gary</p> <p>19 Romain for the balance sheet and, two, to estimate</p> <p>20 the daily change in risk. I don't remember these</p> <p>21 numbers specifically, but at various times I came</p> <p>22 into contact with the amount of margin that was in</p> <p>23 the OCC was a very important number to us.</p> <p>24 Q. Do you have an understanding whether</p> <p>25 the numbers reflected in that paragraph are the</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 net margin numbers that you had asked Lily for?</p> <p>3 A. I -- I don't think -- did you say I</p> <p>4 wasn't on the e-mail?</p> <p>5 Q. Yes, and I understand that, but I am</p> <p>6 asking you sitting here today, do you have an</p> <p>7 understanding of whether the numbers referenced on</p> <p>8 the front page of Exhibit 95 represent the net</p> <p>9 margin that you had asked Lily for on Sunday, the</p> <p>10 21st of September?</p> <p>11 A. It says it is an OCC statement. We</p> <p>12 did use the OCC statements and I remember some of</p> <p>13 the sheets at the back, not these ones in</p> <p>14 particular necessarily, but ones that look very</p> <p>15 similar to it that were being used.</p> <p>16 But you know, one thing that I would</p> <p>17 ask you to bear in mind is that I was running a</p> <p>18 very substantial risk book with a large number</p> <p>19 of people that either reported directly to me</p> <p>20 or were seconded to me. Much of this kind of</p> <p>21 material was processed before it got to me. I</p> <p>22 may have been copied on it, but if there is</p> <p>23 only one number in here that turns out to be</p> <p>24 relevant, then somebody may have processed that</p> <p>25 for me into a form that I could consume.</p>

Page 254	Page 255
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 This was just one of many streams of</p> <p>3 risk management valuation, operational process</p> <p>4 risk management that we were undertaking</p> <p>5 simultaneously.</p> <p>6 Q. Do you recall any particular members</p> <p>7 of your team who would have processed that</p> <p>8 information for you?</p> <p>9 A. A variety of people.</p> <p>10 Q. Can you give me the names of that</p> <p>11 variety of people?</p> <p>12 A. For example, Jasen Yang.</p> <p>13 Q. Would Tim Stack also have been one of</p> <p>14 those individuals?</p> <p>15 A. Tim Stack actually was -- Tim Stack</p> <p>16 doesn't work for me, but Tim Stack was -- Tim</p> <p>17 Stack, not really. Tim Stack was more -- Tim and</p> <p>18 I almost had different objectives.</p> <p>19 Tim's job was at the time really</p> <p>20 customers and mine was really proprietary. So</p> <p>21 whatever Tim wanted in his world, almost by</p> <p>22 construction wouldn't have been in my world,</p> <p>23 and vice versa. So we wanted to separate our</p> <p>24 two worlds. Then he could get on with dealing</p> <p>25 with customers and customer accounts and I</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 could get on dealing with the net exposure that</p> <p>3 the bank had to the -- what were called the</p> <p>4 proprietary accounts at the clearing house and</p> <p>5 exchanges. So 074, for example, was one that I</p> <p>6 remember and we spent a lot of time on 074.</p> <p>7 (Exhibit 395-B, document Bates stamped</p> <p>8 BCI-EX-S 57416 through 417 marked for</p> <p>9 identification, as of this date.)</p> <p>10 Q. Mr. King, I have handed you what I</p> <p>11 have marked as Exhibit 395-B, which on this</p> <p>12 occasion I am able to identify for the record as</p> <p>13 having a Barclays Bates stamp BCI-EX-S 00057416</p> <p>14 through 417. Can you let me know when you have</p> <p>15 had a chance to review that, please.</p> <p>16 A. Um-hm.</p> <p>17 Q. Could you recall this document, sir?</p> <p>18 A. Again, this is just an e-mail</p> <p>19 exchange. I remember lots of dialog with --</p> <p>20 Q. I am sorry, I didn't mean to cut you</p> <p>21 off.</p> <p>22 A. I remember lots of dialog with Nick.</p> <p>23 I just don't remember this traffic in particular.</p> <p>24 Q. When you say Nick, do you mean to</p> <p>25 refer to Nick --</p>
Page 256	Page 257
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. Nick Moreira.</p> <p>3 Q. Do you tell me who Nick Moreira was,</p> <p>4 please?</p> <p>5 A. Nick Moreira was a Barclays employee</p> <p>6 who we -- again, who doesn't work for me but who</p> <p>7 was made available to me to facilitate the risk</p> <p>8 management of the exchange-traded derivatives</p> <p>9 position.</p> <p>10 Q. There is a reference at the bottom of</p> <p>11 the page to a call, you're asking Michael</p> <p>12 Schmanske to join?</p> <p>13 A. Um-hm.</p> <p>14 Q. Who is Michael Schmanske?</p> <p>15 A. I don't know his position. If I</p> <p>16 remember correctly, Mike -- he was a Lehman</p> <p>17 employee and he worked somewhere in Jerry Dineen's</p> <p>18 equity world and I think was the sort of middle</p> <p>19 office or desk operations person who we had been</p> <p>20 pointed to towards being able to help us</p> <p>21 understand what the exchange-traded derivative</p> <p>22 positions were.</p> <p>23 Q. OK. Do you recall in general terms</p> <p>24 what was discussed on that call?</p> <p>25 A. Which one was this? Monday at 3 in</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 the afternoon. More of the same discussion how do</p> <p>3 we get a handle on what the net positions are on</p> <p>4 the exchanges.</p> <p>5 Q. There is a reference in your e-mail,</p> <p>6 you say if there is anyone there who has an</p> <p>7 overall view, then I suggest they join.</p> <p>8 A. Yeah.</p> <p>9 Q. Do you remember whether anyone in</p> <p>10 particular joined that call in response to your</p> <p>11 suggestion that someone with an overall view join?</p> <p>12 A. Not on that call I think, although</p> <p>13 this was a -- this was a party that grew and grew</p> <p>14 and grew for a while as we tried to work out how</p> <p>15 we could get a handle on what the position was and</p> <p>16 then it shrank back down to a much smaller number</p> <p>17 of people in the end.</p> <p>18 Q. Apart from Nick Moreira and Michael</p> <p>19 Schmanske, who else was involved in helping you</p> <p>20 understand the risk associated with Lehman's OCC</p> <p>21 related exchange-traded derivatives?</p> <p>22 A. I mean there is a -- I don't even</p> <p>23 remember all of the names of them. I mean, it is</p> <p>24 many of the people that are copied on this e-mail,</p> <p>25 like Tim Stack, obviously members of my team,</p>

Page 258

1 KING - HIGHLY-CONFIDENTIAL  
2 Jasen and Sean, Nick Moreira, traders in Nick  
3 Moreira's group, people in Jerry's team at Lehman,  
4 operations people, compliance people.  
5 I mean, it was a very substantial  
6 number of people that were involved to make  
7 sure that we had -- because we had a number of  
8 issues. We had to determine -- we had tried to  
9 estimate what the economic risk was in a second  
10 so that we could manage it. We had to try and  
11 work out how we could close out of the  
12 positions and insure that we weren't closing  
13 out client positions inadvertently. We had to  
14 insure that we were operating within compliance  
15 guidelines because these are public  
16 exchange-traded derivative positions. So it  
17 was a cumbersome process.  
18 Q. Why were you trying to close out  
19 positions at the OCC, Mr. King?  
20 A. Because we didn't -- we had no desire  
21 to have an open exchange-traded derivatives  
22 position. These were naked -- this is naked risk.  
23 Q. Can you explain what you mean by  
24 "naked risk"?  
25 A. It was not a risk that was -- that

Page 260

1 KING - HIGHLY-CONFIDENTIAL  
2 positions at the OCC they were trying to transfer?  
3 A. I -- yeah, there were some -- I  
4 know -- I don't know anything about transfers at  
5 the OCC or any of the futures exchanges or  
6 anything else. All I know is that there was  
7 separate discussions about it, but I wasn't party  
8 to them.  
9 (Exhibit 396-B, document Bates stamped  
10 BCI-EX-S S8711 through 114 marked for  
11 identification, as of this date.)  
12 Q. Mr. King, you have in front of you  
13 what I have marked as Exhibit 396-B, which is a  
14 document produced by Barclays BCI-EX-S 00087112  
15 through 114.  
16 A. Yes.  
17 Q. Do you recall this document, sir?  
18 A. Not this document. Again, I'm -- you  
19 know, I'm involved in the exchange, so I loosely  
20 remember the exchange.  
21 Q. Turning your attention to the third  
22 page of the document, the bottom of the e-mail  
23 chain appears to be an e-mail from you on  
24 September 30 at 1:24 p.m. to Nick Moreira and  
25 others. Do you see that?

Page 259

1 KING - HIGHLY-CONFIDENTIAL  
2 served any purpose. It is a -- it turned out it  
3 was approximately -- I am only using this as  
4 approximate because it was more complicated than  
5 this, but it was -- the exposure behaved something  
6 like being long three and a half billion dollars  
7 of the S&P. That doesn't mean you had 3 and a  
8 half billion dollars of value. It meant if there  
9 was, say, 500 million dollars of margin against  
10 those derivative positions and the index had  
11 fallen 10 percent, then we could have run out of  
12 margin.  
13 Q. Were you, at any stage, Mr. King,  
14 trying to transfer positions at the OCC?  
15 MR. STERN: Objection to the form.  
16 A. No. Other people were involved with  
17 transferring customer-related stuff, but no, we  
18 weren't involved. We had no -- again, coming back  
19 to my role in this overall transaction was  
20 valuation and risk management. Here we had  
21 identified a risk and our job was to eliminate it.  
22 We weren't trying to start a business or run  
23 something. We just needed to eliminate it.  
24 Q. Those other people you referenced who  
25 were trying to transfer positions, was it customer

Page 261

1 KING - HIGHLY-CONFIDENTIAL  
2 A. Yes.  
3 Q. "Subject: MM, LBI and LBSF options."  
4 Do you see that?  
5 A. Yes.  
6 Q. What does MM stand for?  
7 A. I don't remember.  
8 Q. LBI is presumably Lehman Brothers  
9 Incorporation?  
10 A. Yeah.  
11 Q. What does LBSF stand for?  
12 A. It was another one of the Lehman  
13 Brothers entities. I am trying to remember what  
14 MM is.  
15 Q. And you will see you are asking Nick  
16 Moreira and others for the current MV of for  
17 each --  
18 A. Yeah.  
19 Q. -- each of the buckets of options?  
20 A. Um-hm.  
21 Q. And if you turn to the second page  
22 1173, Lucas, Thierry provides the answer to you,  
23 do you see that?  
24 A. Yes.  
25 Q. And you reply, "So I guess this is the

Page 262	Page 263
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 liability. What's the asset. Must be the margin,</p> <p>3 how much do we have?" Do you see that?</p> <p>4 A. Yup, yup.</p> <p>5 Q. Can you explain what you meant by that</p> <p>6 answer?</p> <p>7 A. No, not particularly. I would have to</p> <p>8 work through what it was. Yeah, Thierry worked</p> <p>9 for Nick Moreira. Thierry was an equity</p> <p>10 volatility trader, and he was assisting me in the</p> <p>11 hedging and identification and estimation of the</p> <p>12 risk of the exchange-traded derivatives positions.</p> <p>13 And what is kind of evident in some of</p> <p>14 these exchanges is that MM was market maker.</p> <p>15 So MM was market maker. So would effectively</p> <p>16 have been there for those -- the market maker</p> <p>17 positions, just outright, net proprietary</p> <p>18 positions.</p> <p>19 Q. OK, so MM would be proprietary</p> <p>20 positions, correct?</p> <p>21 A. Yeah.</p> <p>22 Q. LBI is also proprietary positions?</p> <p>23 A. Yeah, I think that was again an OCC</p> <p>24 definition. There weren't customer positions.</p> <p>25 There were two types of proprietary positions.</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 One were the market maker positions, one were</p> <p>3 proprietary trading positions. The OCC had</p> <p>4 slightly different classifications for them, but</p> <p>5 effectively they both behaved as if they were just</p> <p>6 crude risk positions that would look like</p> <p>7 proprietary positions from Barclays' point of</p> <p>8 view.</p> <p>9 Some of the discussions about these</p> <p>10 highlight that some of this area,</p> <p>11 exchange-traded derivatives, was about as far</p> <p>12 from our normal trading products suite as we</p> <p>13 could get, and therefore, we are learning the</p> <p>14 language as we go along and some of that</p> <p>15 language is even mathematical. Thierry was an</p> <p>16 options trader and you will notice that all of</p> <p>17 the numbers that he provides me are negative.</p> <p>18 The parentheses imply that they are negative.</p> <p>19 So I guess this is -- the liability is</p> <p>20 referring to the fact that Thierry has provided me</p> <p>21 a string of negative numbers. And at various</p> <p>22 times, that would scare me a great deal because</p> <p>23 not knowing much about exchange-traded</p> <p>24 derivatives, did this mean that somebody owed the</p> <p>25 exchange 1.2 billion dollars.</p>
Page 264	Page 265
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 So therefore, I say what is the asset,</p> <p>3 must be the margin, how much do we have. That</p> <p>4 plays back to the comment that I made about the</p> <p>5 net margin, the derivatives themselves can be</p> <p>6 in or out of the money and, therefore, they</p> <p>7 could have a positive or negative value that</p> <p>8 needs to be added to the collateral. And I</p> <p>9 think that's what that sentence is</p> <p>10 highlighting.</p> <p>11 Q. Over the page on the bottom of the</p> <p>12 first page of the document, you appear to</p> <p>13 calculate an excess of 426?</p> <p>14 A. Yes.</p> <p>15 Q. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know what that's a reference</p> <p>18 to?</p> <p>19 A. So I think that highlights -- this is</p> <p>20 about three days of my life that I wouldn't mind</p> <p>21 not remembering because it wasn't straightforward.</p> <p>22 The 1.14, if we added up the three</p> <p>23 line items that Thierry had sent me, 1.061,</p> <p>24 .5, -- .045, .034, all measured in billions, that</p> <p>25 sums to approximately 1.14 billion. And that</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 would appear to me to be the contract amount.</p> <p>3 The 942 and 624 on the page over is provided by</p> <p>4 Sean, total OC margin for firm book. Firm book</p> <p>5 was what MM and LBI, I can't remember exactly</p> <p>6 how it was broken out for 9.2, and then 623 is</p> <p>7 the MM book. So 623 plus 942 adding up to</p> <p>8 1.566.</p> <p>9 So that's then the margin. So the</p> <p>10 excess margin, the net margin is .426 million.</p> <p>11 So that would end up being an estimate because</p> <p>12 we were just getting our heads around it, but</p> <p>13 it highlights what I was saying. I wouldn't</p> <p>14 know -- when you asked me would I interpret</p> <p>15 exchange-traded derivatives to mean margin and</p> <p>16 contracts, I wouldn't know how to separate</p> <p>17 these as that calculation shows.</p> <p>18 Q. If I understand your answer correctly,</p> <p>19 you are defining net margin as excess of margin</p> <p>20 over the contract amount?</p> <p>21 A. I think that's right. I think that's</p> <p>22 right. I'm not sure I intended to define it as</p> <p>23 such, but I believe if I was doing the same thing</p> <p>24 as I did then, I would have called those</p> <p>25 synonomous.</p>

Page 266	Page 267
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. This net margin that you estimated,</p> <p>3 426, that's 426 million dollars, sir?</p> <p>4 A. Sorry? That would be millions.</p> <p>5 Q. This figure is 426 million?</p> <p>6 A. Yes, by induction by from the other</p> <p>7 pages.</p> <p>8 Q. What happened to that 426 million,</p> <p>9 Mr. King?</p> <p>10 A. I don't know.</p> <p>11 Q. Would it have gone to Barclays?</p> <p>12 A. I see the OCC margin as an item on the</p> <p>13 balance sheet, so that was my understanding.</p> <p>14 Q. And it is an item under assets in the</p> <p>15 balance sheet, correct?</p> <p>16 A. It would be an asset, yes.</p> <p>17 Q. Was a similar exercise to calculate</p> <p>18 the net margin at OCC done for other options</p> <p>19 beyond those three buckets of options described in</p> <p>20 what I have marked as Exhibit 396-B?</p> <p>21 A. There were various others as well.</p> <p>22 Q. Who performed that analysis or those</p> <p>23 analyses?</p> <p>24 A. We did, but this I seem to remember</p> <p>25 was the largest one. For example, I think</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 somebody alludes to it in here, Thierry alludes to</p> <p>3 the VIX options. Yeah, I'm working with a futures</p> <p>4 team, Liz and James. Futures were treated as</p> <p>5 separately from us just because we didn't -- it</p> <p>6 wasn't the same risk management issue. Determine</p> <p>7 net remaining margin on the LBF VIX futures book,</p> <p>8 OCC 084. That's alluding to go 084. I think this</p> <p>9 was all dealing with 074, wasn't it? I think it</p> <p>10 was 074.</p> <p>11 Q. Was your team, Mr. King, responsible</p> <p>12 for calculating the net margin on any options at</p> <p>13 OCC other than those discussed in this e-mail</p> <p>14 marked as Exhibit 396B?</p> <p>15 A. A bit like I described earlier, that</p> <p>16 there was some things on the cash assets that were</p> <p>17 undertaken by my group and others that were --</p> <p>18 other activities that were coordinated where the</p> <p>19 relevant trading desk at Barclays undertook</p> <p>20 responsibility and then we performed an</p> <p>21 aggregating role.</p> <p>22 The same is true here. We provided a</p> <p>23 conduit, in the early days, not in the late</p> <p>24 days, but in the very early days of</p> <p>25 facilitating just the process management around</p>
Page 268	Page 269
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 identifying all of the margin that was</p> <p>3 available in all of the accounts. But later</p> <p>4 on, you know, as quickly as we possibly could,</p> <p>5 we pushed those responsibilities back into</p> <p>6 their respective business units.</p> <p>7 Q. OK. Aside from the three buckets of</p> <p>8 options described in this Exhibit 396-B, and other</p> <p>9 than the aggregating role that you have just</p> <p>10 testified to, did your team have responsibility</p> <p>11 for calculating net margin on any other groups of</p> <p>12 options at OCC or elsewhere?</p> <p>13 A. We didn't ever -- I don't think we</p> <p>14 ever -- yeah, I'm not sure we ever really</p> <p>15 calculated net margin for anything like this. I</p> <p>16 mean, I am doing it very crudely here in this</p> <p>17 e-mail, but for the most part we would have just</p> <p>18 been aggregating, as Sean does on the second page,</p> <p>19 information that was coming from other sources</p> <p>20 within the bank and us trying to interpret it and</p> <p>21 then forward that on in a more manageable form to</p> <p>22 product control before product control was able to</p> <p>23 take on the process directly themselves.</p> <p>24 Q. For what purpose did you do this net</p> <p>25 margin calculation, sir?</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. I don't remember why I did it here. I</p> <p>3 did this calculation or people who work for me,</p> <p>4 when I say I, did it repeatedly initially to find</p> <p>5 out whether what the size of the asset was that we</p> <p>6 would then report on to product control for</p> <p>7 inclusion on the acquisition balance sheet, and</p> <p>8 two, to estimate the daily change so that we could</p> <p>9 estimate our risk.</p> <p>10 Q. Do you have a recollection, Mr. King,</p> <p>11 of the aggregated net margin that was forwarded by</p> <p>12 your group to product control for inclusion on the</p> <p>13 acquisition balance sheet or otherwise?</p> <p>14 A. It was a very volatile number. I</p> <p>15 don't remember what it was from day-to-day. I</p> <p>16 think in a week following -- in the week following</p> <p>17 the first Lehman bankruptcy there was about a 15</p> <p>18 percent decline in the equity market and then</p> <p>19 there was a rally and there was, you know, so the</p> <p>20 volatility of this number is measured in hundreds</p> <p>21 of millions of dollars a day, and even that risk</p> <p>22 number changes actually as the market itself</p> <p>23 moved. So I don't remember the numbers. In fact,</p> <p>24 I didn't ever really care about the numbers. All</p> <p>25 I cared was that the numbers were current and</p>

Page 270	Page 271
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 accurate.</p> <p>3 MR. STERN: Let's pause here for a</p> <p>4 second.</p> <p>5 (Pause)</p> <p>6 Q. Mr. King, I have handed you what has</p> <p>7 previously been marked as 377A. If you could take</p> <p>8 a look at that and I am primarily asking you about</p> <p>9 pages 2 and 3, although you are, of course,</p> <p>10 welcome to review the full document.</p> <p>11 A. OK.</p> <p>12 Q. Do you recognize that document, sir?</p> <p>13 A. I haven't seen the document before.</p> <p>14 I've seen, at various times, I've seen forms of</p> <p>15 the spreadsheets that are shown on page 2 and 3.</p> <p>16 Q. If I were to describe page 1 as the</p> <p>17 acquisition balance sheet, would that comport with</p> <p>18 your understanding?</p> <p>19 A. I actually think of page 2 and 3 as</p> <p>20 summaries of the acquisition balance sheet, but</p> <p>21 column D sums to the same as column C on page 2</p> <p>22 and so the first spreadsheet is a reorganized</p> <p>23 version of the second and third spreadsheets I</p> <p>24 think.</p> <p>25 Q. Do you have any involvement, Mr. King,</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 in providing any information that was used to</p> <p>3 compile Exhibit 377A or any subpart of it to your</p> <p>4 knowledge?</p> <p>5 A. Do you have a date on these?</p> <p>6 Q. I don't think there is an embedded</p> <p>7 date.</p> <p>8 A. 390-B was dated on the 22nd and is a</p> <p>9 -- is called the Long Island Acquisition Summary</p> <p>10 and it -- certainly the second page of 377-A that</p> <p>11 you have just shown me is just a later form of</p> <p>12 390-B.</p> <p>13 Q. And focusing in particular on the</p> <p>14 references to OCC on pages 2 and 3 of Exhibit 377,</p> <p>15 sir?</p> <p>16 A. Right.</p> <p>17 Q. If you look on the second page in line</p> <p>18 18?</p> <p>19 A. Yes.</p> <p>20 Q. You will see there is a reference OCC</p> <p>21 customer and clearing margin which in column C</p> <p>22 appears to be .89 billion. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. To your knowledge, sir, were you</p> <p>25 involved in providing any information or</p>
Page 272	Page 273
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 calculating that figure?</p> <p>3 A. That number and the -- I remember</p> <p>4 there was an error in -- there was some -- again,</p> <p>5 there is an even later version of this where some</p> <p>6 of these were reorganized, but, for example,</p> <p>7 the -- for example, this one now includes what was</p> <p>8 called the JP Morgan inventory of 3.92 and</p> <p>9 settlement of 1.25.</p> <p>10 So this one starts to show that we</p> <p>11 didn't receive the 7 billion of cash that was</p> <p>12 shown on the balance sheet that was as of the</p> <p>13 22nd that shows how there were iterations of</p> <p>14 this as things became clearer, including the</p> <p>15 fact that we weren't going to receive</p> <p>16 everything that we expected to receive.</p> <p>17 The 0.98 and the exchange rate options</p> <p>18 0.21, I remembered again those were later revised</p> <p>19 because they -- the combination of that, the</p> <p>20 futures, customer balances and the exchange-rated</p> <p>21 options numbers weren't being calculated right for</p> <p>22 some reason. But yes, the calculation you just</p> <p>23 asked me about, the 457, I don't remember how we</p> <p>24 got to where we did, but -- where is the 457, was</p> <p>25 that in Exhibit 396-B was an example of</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 calculating that 0.98 number and the 0.21 --</p> <p>3 Q. The calculation, sir, in Exhibit</p> <p>4 396-B, is it fair to say that that calculation was</p> <p>5 a constituent part of the compilation of the</p> <p>6 numbers reflected on pages 2 and 3 of Exhibit 377?</p> <p>7 A. Because they are not time stamped -- I</p> <p>8 mean, the one that you are showing me, see the</p> <p>9 e-mail that you are showing me from Thierry Lucas</p> <p>10 to me was on the 30th of September, so quite a lot</p> <p>11 of time has passed between the 22nd. The balance</p> <p>12 sheet we were first looking at is the 22nd.</p> <p>13 I can't remember at what time we</p> <p>14 started to work out where we were going to</p> <p>15 split up the assets into different entities,</p> <p>16 but you can see on page 2 of 377-A, that we had</p> <p>17 started that process or the firm had started</p> <p>18 the process of telling us where it wanted to</p> <p>19 put different assets, but I don't know the time</p> <p>20 stamps. So I don't know whether -- I actually</p> <p>21 don't remember -- I absolutely don't remember</p> <p>22 whether this would precede or follow the</p> <p>23 estimate -- and whether they were even</p> <p>24 complete, whether this one on the 30th was even</p> <p>25 a complete number for the same, 0.98 and 0.21</p>

Page 274

1 KING - HIGHLY-CONFIDENTIAL  
2 on this or whether they were just different  
3 times or whether they were different -- they  
4 are related. There is a relationship between  
5 them, but I don't know what it is.

6 Q. And Jack will jump if he doesn't like  
7 this, I feel sure. It is my understanding that  
8 these are the final acquisition balance sheets  
9 provided to Barclays accountants.

10 A. These are at the end of the year?  
11 These are the December ones?

12 Q. That is my understanding.

13 A. OK.

14 Q. Based on that understanding, does that  
15 help you answer my question whether you or your  
16 team was involved in providing these numbers that  
17 appear on pages 2 and 3 of Exhibit 377-A,  
18 specifically the OCC references?

19 A. Not by this time. If this is the year  
20 end, then no.

21 Q. Do you understand who would have been  
22 involved in providing those numbers?

23 A. By this stage? Product control, the  
24 respective businesses, finance, et cetera. Our  
25 involvement was providing the estimate at the time

Page 276

1 KING - HIGHLY-CONFIDENTIAL  
2 assets, valuation adjustment, total inventory --  
3 that's -- I wish my eyes were better.

4 The 0.9 -- this is a -- this can't be  
5 the final, by the way, because it says "draft"  
6 at the top of that. I don't know what -- there  
7 is a footnote 2 on page 2. It says, "These are  
8 net amounts. The actual bookings are grossed  
9 up to reflect the relevant assets, receivables  
10 and payables. See net tab."

11 So I would have to do the sums. But  
12 on -- on the following page, there are also  
13 references on row 42, for example,  
14 exchange-traded options derivative mark to  
15 market, derivative liabilities 1.1. So there  
16 are numbers, there are OCC margin numbers in  
17 the top, loans and advances to customers, and  
18 then there are also numbers down in the assets  
19 below. So I would have to do all of the math,  
20 I would have to work out -- I could -- if I had  
21 the spreadsheet, I could do it, but I don't  
22 so--

23 Q. That's fine. No need to trouble you  
24 further on that one.

25 Handing you what we have previously

Page 275

1 KING - HIGHLY-CONFIDENTIAL

2 before we had the opportunity to fully integrate  
3 the businesses.

4 Q. The OCC entries on pages 2 and 3 have  
5 slightly different language. Do you see that?

6 A. Um-hm.

7 Q. Page 2, line 18, it says, "OCC  
8 customer and clearing margin." That's the .98  
9 billion figure?

10 A. Yup.

11 Q. Do you see that?

12 A. Yup.

13 Q. Line 16 on page 3 says, "OCC margin  
14 against exchange-traded options."

15 A. Yeah.

16 Q. Do you have any understanding of the  
17 difference, if any, between those two  
18 descriptions? Obviously the numbers are  
19 different. The first figure on page 2 is .98  
20 billion and the figure on page 3 is 1.31 billion.  
21 But in terms of the assets described, do you have  
22 an understanding of what they are and how they are  
23 different?

24 A. I was working through them. This one  
25 has all of the -- they both have the unencumbered

Page 277

1 KING - HIGHLY-CONFIDENTIAL  
2 marked as Exhibit 51.

3 A. In a minute, can I send an e-mail?

4 Q. If you want to take a couple minutes.  
5 (Recess)

6 Q. Mr. King, you have in front of you  
7 what has previously been marked as Exhibit 51. It  
8 is the transfers and assumption agreement between  
9 Barclays, the OCC and the SIPA trustee. Can you  
10 tell me if you have seen this document before?

11 A. No.

12 Q. Have you ever had any discussions, of  
13 course other than with counsel, about this  
14 document?

15 A. I don't think I have even had  
16 conversations with counsel on it.

17 Q. If you could turn to page 2, please,  
18 and look at in particular 2C. Can you see that it  
19 says, "Barclays hereby, one, represents and  
20 warrants that it has received such documents and  
21 other information as it has deemed appropriate to  
22 make its own credit analysis and decision to enter  
23 into this agreement."

24 Do you see that?

25 A. Um-hm.

Page 278	Page 279
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. I take it from your prior answers that</p> <p>3 you have no knowledge about any documents received</p> <p>4 or any credit analysis performed by Barclays</p> <p>5 pursuant to this agreement?</p> <p>6 MR. STERN: Objection to the form.</p> <p>7 A. No.</p> <p>8 Q. And you don't have any information</p> <p>9 about who at Barclays would have been involved in</p> <p>10 that credit analysis?</p> <p>11 A. No.</p> <p>12 Q. Do you have any information about who</p> <p>13 at Barclays was involved in the business decision</p> <p>14 to enter this agreement?</p> <p>15 A. No.</p> <p>16 Q. OK, that is all I have for that</p> <p>17 document.</p> <p>18 (Exhibit 397-B, document Bates stamped</p> <p>19 BCI EX-81185 marked for identification, as</p> <p>20 of this date.)</p> <p>21 Q. Mr. King, I have handed you what has</p> <p>22 been marked 397-B with Bates stamp BCI EX-81185.</p> <p>23 Can do you recognize this document, sir?</p> <p>24 A. I wrote it, but I don't remember it.</p> <p>25 But I remember thinking about this issue, but I</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 don't remember the document specifically.</p> <p>3 Q. It is an e-mail from you to Rich Ricci</p> <p>4 on September 21 on Sunday morning around 10 a.m.,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. Subject matter is TBS/DTC?</p> <p>8 A. Or TBA and DTC or subject is -- right,</p> <p>9 OK.</p> <p>10 Q. Can you tell me what "TBA" means in</p> <p>11 this context?</p> <p>12 A. I don't remember what "TBA" stands</p> <p>13 for. It means the government agency loan pools,</p> <p>14 government agency mortgage loan pools.</p> <p>15 Q. And DTC in this context?</p> <p>16 A. Is the DTC.</p> <p>17 Q. That's the Depository Trust and</p> <p>18 Clearing Corporation?</p> <p>19 A. Yes.</p> <p>20 Q. You say to Mr. Ricci on Sunday, "Have</p> <p>21 asked Jon Mahon and Sean McKenna (works with me)</p> <p>22 to work through issues on TBA and DTC."</p> <p>23 A. Yes.</p> <p>24 Q. Can you explain to me what you meant</p> <p>25 when you wrote that to Mr. Ricci?</p>
Page 280	Page 281
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. Yes, I think that we actually</p> <p>3 subsequently weren't particularly involved in</p> <p>4 this. Again, this was something that was new to</p> <p>5 us as a concept at that time. These TBAs are</p> <p>6 forward contracts on loan pools, as I described</p> <p>7 them, and they clear through the DTC, and the firm</p> <p>8 started to realize because Lehman was bankrupt,</p> <p>9 there were going to be a tremendous number of</p> <p>10 failed TBA settlements in the market and that was</p> <p>11 going to be extremely disruptive.</p> <p>12 No memory why I was particularly</p> <p>13 sending this one to Ricci or whether there was</p> <p>14 stuff preceding this or following this that was</p> <p>15 the reason why I sent it to him, but there was</p> <p>16 a concern about that.</p> <p>17 Q. Did Mr. Mahon and Mr. McKenna, in</p> <p>18 fact, help you work through the issues involving</p> <p>19 TBA and TDC?</p> <p>20 A. Actually, we ended up not being</p> <p>21 particularly involved in it. The -- I can't</p> <p>22 remember how we -- how the firm ended up resolving</p> <p>23 the issue, wasn't really a firm issue, it was a</p> <p>24 market issue, but we were trying to keep things</p> <p>25 functioning, keep markets as well as ourselves</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 operating as normally as possible and this was</p> <p>3 related to that.</p> <p>4 Q. Can you explain what you mean by you</p> <p>5 were trying to keep markets -- withdrawn.</p> <p>6 You said we were trying to keep things</p> <p>7 functioning and keep markets as well as</p> <p>8 ourselves operating as normally as possible.</p> <p>9 What do you mean by that?</p> <p>10 A. This is a -- rather that we had not</p> <p>11 historically been involved in, these TBA contracts</p> <p>12 settled through the DTC and if -- I can't remember</p> <p>13 exactly how it worked, but if we -- we needed</p> <p>14 to -- the firm needed to help as much as possible</p> <p>15 with allowing or the desire was to help as much as</p> <p>16 possible to allow trades that would otherwise fail</p> <p>17 settle. Because failed trades -- I mean, it is a</p> <p>18 very difficult -- has so many knock-on</p> <p>19 consequences and this was starting to realize</p> <p>20 there was a potential issue with failed trades on</p> <p>21 the Sunday, but I can't remember, you know, pretty</p> <p>22 much immediately following this, the issue sort of</p> <p>23 went away.</p> <p>24 Q. How did you come to learn that the</p> <p>25 issue went away, Mr. King?</p>



Page 282

1 KING - HIGHLY-CONFIDENTIAL  
2 A. It just -- because it went away in the  
3 market, the trades -- I cannot remember for the  
4 life of me now how they were cleared, but the  
5 trades were largely successfully cleared and some  
6 failed.  
7 Q. You go on to say, "Can't guarantee  
8 failed trades on DTC. No way to size."  
9 A. No way to size.  
10 Q. Can you explain to me what that means?  
11 A. I was alluding to the fact that there  
12 was no way to size the cost associated with trying  
13 to insure that all trades would clear through the  
14 DTC in relation to these TBA pools.  
15 Q. Did you have any understanding over  
16 the weekend of September 20 and 21, sir, that DTC  
17 was concerned about its liability in clearing  
18 Lehman trades?  
19 A. No, no. I only about know about it --  
20 I remember the trader, Tom Hamilton, for the flow  
21 business asked me what are we going to do about  
22 all these TBA trades that should be settling on  
23 so-and-so date and we started thinking about it  
24 and I can't remember how we concluded it, but it  
25 was a -- it is a specific issue relating to TBA

Page 284

1 KING - HIGHLY-CONFIDENTIAL  
2 some things we discussed earlier.  
3 Throughout your testimony this  
4 afternoon and this morning, you mentioned a  
5 settlement with JP Morgan Chase and Barclays.  
6 Could you let us know what settlement you are  
7 referring to?  
8 MR. STERN: You don't know that? You  
9 don't know that?  
10 Q. Let me clarify. We don't need all the  
11 details. This is a settlement of a dispute in  
12 regards to cash or securities that were supposed  
13 to be transferred to Barclays as part of a sale  
14 transaction that weren't transferred, correct?  
15 MR. STERN: Wait a second. You know  
16 what we are talking about, the December  
17 settlement?  
18 MR. DAKIS: That's fine. You can  
19 define it any way you want to. I want to  
20 make sure that the record is clear so my  
21 follow-up questions are clear on the record.  
22 MR. STERN: OK, go ahead.  
23 Q. Can you read back that question.  
24 (Record read)  
25 MR. STERN: Objection to the form.

Page 283

1 KING - HIGHLY-CONFIDENTIAL  
2 pools and it went on for about four days. I asked  
3 Sean to help Tom with it. I largely delegated it.  
4 They worked out a way to fix it and it was fixed.  
5 Q. Did you ever hear, Mr. King, that DTC  
6 asked Barclays to guarantee the Lehman trades at  
7 DTC?  
8 A. No, in relation to this TBA, no.  
9 Q. Otherwise?  
10 A. No.  
11 MR. OXFORD: I don't think I have any  
12 further questions for you at this time,  
13 Mr. King.  
14 With reference to what I believe are  
15 inappropriate instructions from counsel, I  
16 reserve my rights to resume questioning at  
17 another time.  
18 MR. STERN: Why don't we get started.  
19  
20 EXAMINATION BY  
21 MR. DAKIS:  
22 Q. We met earlier. I am Robert Dakis  
23 from Quinn, Emanuel, Urquhart, Oliver & Hedges.  
24 We represent the committee of unsecured creditors.  
25 I have a couple of quick follow-up questions on

Page 285

1 KING - HIGHLY-CONFIDENTIAL  
2 Q. You can answer the question.  
3 A. I -- colloquially, I refer to the  
4 securities and cash that were ultimately delivered  
5 to Barclays instead of the 7 billion dollars that  
6 we thought we were supposed to have received.  
7 Q. That's fair enough. Did you have any  
8 discussions with JP Morgan Chase about the cash  
9 that was supposed to have been delivered but  
10 wasn't?  
11 A. No.  
12 Q. Do you have any discussions with JP  
13 Morgan Chase over the weekend of September 20, I  
14 believe?  
15 A. No.  
16 MR. DAKIS: No further questions.  
17 MR. LAYDEN: I have two.  
18 EXAMINATION BY  
19 MR. LAYDEN:  
20 Q. Mr. King, I just wanted to -- again,  
21 David Layden on behalf of the examiner.  
22 This morning, in response to some  
23 questions from Mr. Hine, I believe that you  
24 testified that the securities that Barclays  
25 received from Lehman, some of those securities

Page 286	Page 287
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 I believe you said were sold to one or more</p> <p>3 trading desks at Barclays? Do I correctly</p> <p>4 recall that generally?</p> <p>5 A. Yes.</p> <p>6 Q. I just wanted to orient you as to</p> <p>7 where I am going. How were the prices determined</p> <p>8 at which the securities were sold from the PMTG to</p> <p>9 the trading desk?</p> <p>10 A. There was very little of that done</p> <p>11 because that's not straightforward. The way we</p> <p>12 did it -- the way we -- and that was one of the</p> <p>13 reasons for saying let's not do it. You know, in</p> <p>14 general. We did it with the more liquid products</p> <p>15 that had more observable prices. There were only</p> <p>16 two -- there was a portfolio of Treasuries which</p> <p>17 were sold to the rates trading desk. I seem to</p> <p>18 remember that was about 4 billion or something</p> <p>19 like that. I can't remember exactly the number.</p> <p>20 And the CMOs, the agency-backed</p> <p>21 mortgage -- agency mortgage-backed securities,</p> <p>22 I did it in two different ways. The -- I saw</p> <p>23 published -- I saw the day before price-tested</p> <p>24 prices for the levels at which the Treasuries</p> <p>25 were sold to the Treasuries desk. And -- so I</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 saw those numbers.</p> <p>3 On the agency mortgage-backed pools,</p> <p>4 David Martin, who was referenced in one of the</p> <p>5 earlier e-mail chains and Shujaat Islam,</p> <p>6 I-S-L-A-M, he works for me, I had him sort of</p> <p>7 say would we as a proprietary trading desk, do</p> <p>8 we think their prices are reasonable that the</p> <p>9 flow desk is going to pay. He said yes, so I</p> <p>10 hit the flow trading desk -- it actually took</p> <p>11 quite a few iterations to get them to a level</p> <p>12 that we were comfortable to sell them to them.</p> <p>13 Q. Why were those, the movement of the</p> <p>14 securities from PMTG to the trading desk,</p> <p>15 booked -- or why was it structured as a sale as</p> <p>16 opposed to some other internal transfer within</p> <p>17 Barclays?</p> <p>18 A. It really was -- actually, it was</p> <p>19 structured as an internal structure. We agreed to</p> <p>20 price and we rewired the books to them at a net</p> <p>21 P&amp;L. There was an internal accounting P&amp;L event</p> <p>22 and the books were moved to them.</p> <p>23 MR. LAYDEN: Nothing further. Thank</p> <p>24 you.</p> <p>25 MR. HINE: Do you have anything?</p>
Page 288	Page 289
<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 MR. STERN: No.</p> <p>3 MR. HINE: I guess we are done.</p> <p>4 (Time noted: 5:52 p.m.)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 INDEX:</p> <p>3 WITNESS EXAM BY: PAGE:</p> <p>4 S. King Mr. Hine 6</p> <p>5 Mr. Oxford 204</p> <p>6 Mr. Dakis 283</p> <p>7 Mr. Layden 285</p> <p>8</p> <p>9 EXHIBITS</p> <p>10 Exhibit No. Marked</p> <p>11 Exhibit 388-B Document Bates stamped 34</p> <p>12 BCI-EX-S 74256 through 257</p> <p>13 Exhibit 389-B Document Bates stamped 105</p> <p>14 BCI-EX-S 75200 through 201</p> <p>15 Exhibit 390-B Document Bates stamped 141</p> <p>16 BCI-EX-S 52667 through 68 with</p> <p>17 attachment</p> <p>18 Exhibit 391-B Document Bates stamped 181</p> <p>19 BCI-EX-S 136198</p> <p>20 Exhibit 392-B E-mail dated Wednesday, 225</p> <p>21 September 17, 2008 at 19:14:24</p> <p>22 Exhibit 393-B E-mail dated Friday, 19 235</p> <p>23 September 2008 at 00:57:45</p> <p>24 Exhibit 394-B E-mail dated 9/19/2008 at 239</p> <p>25 9:41 p.m. with attachment</p>

Page 290	Page 291
1 KING - HIGHLY-CONFIDENTIAL	1 KING - HIGHLY-CONFIDENTIAL
2 EXHIBITS	2
3 Exhibit No. Marked	3
4 Exhibit 395-B Document Bates stamped 255	4 CERTIFICATE
5 BCI-EX-S 57416 through 417	5 STATE OF NEW YORK )
6 Exhibit 396-B Document Bates stamped 260	6 )ss:
7 BCI-EX-S S8711 through 114	7 COUNTY OF NEW YORK)
8 Exhibit 397-B Document Bates stamped BCI 278	8 I, MARY F. BOWMAN, a Registered
9 EX-81185	9 Professional Reporter, Certified Realtime
10	10 Reporter, and Notary Public within and for
11	11 the State of New York, do hereby certify:
12	12 That STEPHEN KING, the witness whose
13	13 deposition is hereinbefore set forth, was
14	14 duly sworn by me and that such deposition is
15	15 a true record of the testimony given by such
16	16 witness.
17	17 I further certify that I am not
18	18 related to any of the parties to this action
19	19 by blood or marriage and that I am in no way
20	20 interested in the outcome of this matter.
21	21 In witness whereof, I have hereunto
22	22 set my hand this 10th day of September,
23	23 2009.
24	24
25	25
Page 292	
1 KING - HIGHLY-CONFIDENTIAL	
2 ***ERRATA SHEET***	
3 NAME OF CASE: In Re: Lehman	
4 DATE OF DEPOSITION: September 10, 2009	
5 NAME OF WITNESS: STEPHEN KING	
6 Reason codes:	
7 1. To clarify the record.	
8 2. To conform to the facts.	
9 3. To correct transcription errors.	
10 Page ____ Line ____ Reason ____	
11 From ____ to ____	
12 Page ____ Line ____ Reason ____	
13 From ____ to ____	
14 Page ____ Line ____ Reason ____	
15 From ____ to ____	
16 Page ____ Line ____ Reason ____	
17 From ____ to ____	
18 Page ____ Line ____ Reason ____	
19 From ____ to ____	
20 Page ____ Line ____ Reason ____	
21 From ____ to ____	
22 Page ____ Line ____ Reason ____	
23 From ____ to ____	
24	
25 STEPHEN KING	

# BCI EXHIBIT

78

1                   HIGHLY CONFIDENTIAL - A. KIRK  
2                   UNITED STATES BANKRUPTCY COURT  
3                   SOUTHERN DISTRICT OF NEW YORK

4 -----X

5       In Re:

6   Chapter 11  
7       LEHMAN BROTHERS                   Case No. 08-13555 (JMP)  
8       HOLDINGS, INC., et al.,       (Jointly Administered)

9

                  Debtors.

10

-----X

11

12                   \* \* \* HIGHLY CONFIDENTIAL \* \* \*

13                   DEPOSITION OF ALEX KIRK

14                   New York, New York

15                   August 31, 2009

16

17

18

19

20

21

22

23       Reported by:

24       KATHY S. KLEPFER, RMR, RPR, CRR, CLR

25       JOB NO. 24545

Page 2	Page 3
<p>1           HIGHLY CONFIDENTIAL - A. KIRK 2           August 31, 2009 3           9:30 a.m. 4 5           HIGHLY CONFIDENTIAL deposition 6           of ALEX KIRK, held at Jones Day, LLP, 7           222 East 41st Street, LLP, New York, 8           New York, before Kathy S. Klepfer, a 9           Registered Professional Reporter, 10          Registered Merit Reporter, Certified 11          Realtime Reporter, Certified Livenote 12          Reporter, and Notary Public of the State 13          of New York. 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1           HIGHLY CONFIDENTIAL - A. KIRK 2 3           A P P E A R A N C E S : 4 5           JONES DAY, LLP 6           Attorneys for Lehman Brothers, Inc. 7           222 East 41st Street 8           New York, New York 10017-6702 9           BY: ROBERT W. GAFFEY, ESQ. 10          BRIDGET CRAWFORD, ESQ. 11          GEORGE E. SPENCER, ESQ. 12 13          BOIES, SCHILLER &amp; FLEXNER, LLP 14          Attorneys for Barclays Capital 15          5301 Wisconsin Avenue, NW - Suite 800 16          Washington, DC 20015 17          BY: HAMISH HUME, ESQ. 18 19          CAHILL, GORDON &amp; REINDEL, LLP 20          Attorneys for the Witness 21          80 Pine Street 22          New York, New York 10005 23          BY: DAVID N. KELLEY, ESQ. 24          JOHN O. ENRIGHT, ESQ. 25</p>
Page 4	Page 5
<p>1           HIGHLY CONFIDENTIAL - A. KIRK 2           A P P E A R A N C E S : (Cont'd.) 3 4           QUINN, EMANUEL, URQUHART, OLIVER &amp; HEDGES, LLP 5           Attorneys for the Creditors Committee 6           51 Madison Avenue 7           22nd Floor 8           New York, New York 10010 9           BY: JAMES C. TECCE, ESQ. 10 11          JENNER &amp; BLOCK, LLC 12          Attorneys for the Examiner 13          330 N. Wabash Avenue 14          Chicago, Illinois 60611-7603 15          BY: DAVID C. LAYDEN, ESQ. 16 17          HUGHES, HUBBARD &amp; REED, LLP 18          Attorneys for the SIPA Trustee 19          One Battery Park Plaza 20          New York, New York 10004-1482 21          BY: SETH D. ROTHMAN, ESQ. 22          SAMUEL C. McCoubrey, ESQ. 23 24          Also Present: 25          PHILIP E. KRUSE, Alvarez &amp; Marsal</p>	<p>1           HIGHLY CONFIDENTIAL - A. KIRK 2           ALEX KIRK, called as a 3           witness, having been duly sworn by a Notary 4           Public, was examined and testified as 5           follows: 6           EXAMINATION BY 7           MR. GAFFEY: 8           Q. Mr. Kirk, good morning. My name is 9           Bob Gaffey. We met briefly before. I'm with 10          Jones Day. We are special counsel to the estate 11          of Lehman Brothers Holdings, Inc., and as I 12          guess you may know, we are spending some time 13          looking into the facts surrounding the 14          transaction in September of 2008 -- 15          A. Uh-huh. 16          Q. -- through which Barclays purchased 17          some assets from Lehman. 18          Just a few ground rules. If at any 19          time you need a break, just say so. If there's 20          a question pending, I would prefer to get an 21          answer to it and then we can take break, but 22          just speak right up if you want to take five or 23          ten minutes. 24          I'm kind of a fast talker, so if I'm 25          going too fast, tell me and I'll try and slow</p>

Page 6	Page 7
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b> 2       myself down. And I'm going to ask you please to 3       wait until there's a full question asked before 4       you answer so that we can, as best we can, get a 5       clear record. 6       A. Uh-huh. 7       Q. Okay? 8       Did you have discussions with anyone 9       other than your counsel, Mr. Kelley, to prepare 10      for your deposition today? 11      A. Yes. 12      Q. With whom? 13      A. I don't remember. 14      Q. Mr. Kelley or anybody from his firm? 15      Anybody outside of his firm? 16      A. Outside his firm we met with the 17      Barclays lawyers. 18      Q. Okay. 19      A. I don't remember their names. 20      Q. And by whom are you employed, sir? 21      A. Currently I'm not employed. 22      Q. Was there a time when you were 23      employed at Lehman Brothers? 24      A. Yes. 25      Q. Can you give me, sir, just a brief</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b> 2       description of the positions you held? 3       How long were you at Lehman? 4       A. I was at Lehman two separate stints. 5       I was at Lehman from December of 1994 until 6       January of 2008. 7       Q. Uh-huh. 8       A. And I returned to Lehman in July of 9       2008. When I went to Lehman Brothers from 10      basically July of -- or, December of 1994 till 11      December 2001, I ran the distressed debt 12      business for Lehman Brothers. From 2002 until 13      2006, I ran the high-yield and leveraged loan 14      business for Lehman Brothers. From 2006 until 15      October of 2007, I ran the global credit 16      businesses. From October 2007 until January of 17      '08, I was co-chief operating officer of fixed 18      income, and from -- and then I left the firm. 19      When I returned, I was global head of principal 20      businesses for that brief period of time. 21      Q. And why did you leave the firm in 22      January of '08? 23      A. The global head of fixed income, Roger 24      Nagioff, had resigned; my partner, Andy Morton, 25      was promoted to head of fixed income; and I</p>
Page 8	Page 9
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b> 2       reached a mutual agreement to leave the firm 3       with senior -- with the president of Lehman 4       Brothers. 5       Q. And where did you work in between 6       January of '08 and July of '08 when you returned 7       to Lehman? 8       A. Didn't work. 9       Q. And what occasioned your return to 10      Lehman in July of '08? 11      A. They had promoted Bart McDade to be 12      president of the firm, and he requested that I 13      return to the firm within a few days of his 14      elevation. 15      Q. And I take it you worked at Lehman -- 16      well, for how long after July of '08 did you 17      work at Lehman Brothers? 18      A. Until the end. Until most of the 19      employees were transferred to Barclays, U.S. 20      employees. 21      Q. And at the end, did you transfer over 22      to Barclays yourself? 23      A. Yes. 24      Q. And when did you start work at 25      Barclays?</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b> 2       A. I don't remember the transfer date, to 3       be honest with you. I worked there till the 4       first week of November. 5       Q. First week of November '08? 6       A. Yes. 7       Q. What positions did you hold at 8       Barclays? 9       A. I didn't have a position at Barclays. 10      Q. Was there -- I know it was sort of 11      tumultuous times. Was there any break in 12      between leaving Lehman and going to Barclays, or 13      did you just sort of start working at Barclays 14      at the end of the Lehman -- 15      A. Whenever the actual HR records 16      transferred. 17      Q. Okay. Did you have a written 18      employment agreement with Barclays? 19      A. No. 20      Q. Was any written employment agreement 21      ever offered to you by Barclays? 22      A. No. 23      Q. Would you describe to me your 24      compensation package at Lehman -- withdrawn. 25      What was your compensation arrangement</p>

Page 10

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       **for Lehman when you returned in July of '08?**  
3       A. I would, when I returned, I would  
4       receive salary.  
5       Q. And what was the salary?  
6       A. It was supposed to be [REDACTED] but  
7       through an administrative mistake, I got paid  
8       [REDACTED]  
9       Q. And what was your salary at Barclays?  
10      A. The same.  
11      Q. Did you have any arrangements or  
12      agreements for a bonus at Lehman?  
13      A. No.  
14      Q. Did you have any arrangements or  
15      agreements for a bonus at Barclays?  
16      A. Yes.  
17      Q. What were those?  
18      A. Let me clarify.  
19      Q. Sure.  
20      A. About two weeks after I arrived at  
21      Lehman, I was granted, without a request --  
22      maybe two or three weeks, I don't remember the  
23      exact time -- equity under a program they had  
24      started that spring. They were granting equity  
25      to a lot of the senior executives, and I was

Page 12

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       the buy side of the business.  
3       Q. Could you explain to me what you mean  
4       by that?  
5       A. Meaning I wanted to go work as a  
6       principal in a hedge fund or a money management  
7       firm.  
8       Q. Did you do that?  
9       A. I'm in the process of setting up a  
10      firm right now.  
11      Q. Before you went to work at Barclays,  
12      before the end of Lehman, had you had any  
13      discussions with anyone at Barclays about the  
14      prospects of working there after the Lehman sale  
15      was concluded?  
16      A. I was approached by Bob Diamond to see  
17      if I was interested in a job, broadly, as  
18      opposed to a specific job. I told him I wasn't.  
19      Q. Pardon me?  
20      A. I was not.  
21      Q. And when were you approached by Bob  
22      Diamond?  
23      A. At some point within the first week or  
24      two that they were -- I would say probably that  
25      week that they were negotiating to buy the firm.

Page 11

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       granted I think it was [REDACTED] shares of Lehman  
3       equity.  
4       Q. And what were your bonus arrangements  
5       or agreements with Barclays?  
6       A. About the end of October, I reached  
7       out to Bart McDade suggesting that perhaps  
8       Barclays could pay me a bonus before I left.  
9       About a week later, they informed me that they  
10      would pay me [REDACTED] in two separate  
11      installments.  
12      Q. And were those installments to be paid  
13      on the first and second anniversary of your  
14      Barclays tenure; was that the arrangement?  
15      A. No, it was November 15th and  
16      February -- sometime in February.  
17      Q. Did you receive either of those  
18      payments?  
19      A. Yes.  
20      Q. The first one, I take it?  
21      A. Both.  
22      Q. Both, okay.  
23      Why did you leave Barclays?  
24      A. I had -- because I wanted to leave the  
25      sell side of the business, broadly, and move to

Page 13

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       If not that week, the week after.  
3       Q. Okay. We're going to spend a lot of  
4       time today talking about the negotiations on  
5       that point, so let me take this point to frame  
6       out some dates.  
7       I put before you a blank calendar  
8       which may help you with days of the week that  
9       we'll talk about, but when you talk about the  
10      week in which there were negotiations, could you  
11      tell me what week or weeks you're talking about?  
12      A. The week of September -- Monday,  
13      September 15th through Friday, you know, through  
14      Sunday, September 21st.  
15      Q. And at what point during that week did  
16      Mr. Diamond talk to you about coming to work for  
17      Barclays?  
18      A. I don't remember if it was that week  
19      or the following week.  
20      Q. Again, just to give us a time point,  
21      the transaction we're talking about closed on  
22      September 22. Do you recall if it was before or  
23      after the closing?  
24      A. I don't recall.  
25      Q. Was it just you and Mr. Diamond in the



Page 14

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 conversation?  
3 A. Yes.  
4 Q. And apart from this conversation with  
5 Mr. Diamond, had you had discussions with anyone  
6 about going to work for Barclays?  
7 A. No.  
8 Q. And when you had the discussion with  
9 Mr. Diamond, did he talk to you about a  
10 compensation package?  
11 A. No.  
12 Q. When did you first talk to anyone at  
13 Barclays about a compensation package?  
14 A. First conversation I had with anybody  
15 at Barclays was the meeting I sat down with Rich  
16 Ricci where he told me what the  
17 severance/compensation packet bonus would be,  
18 which was in late October.  
19 Q. Had you had any conversations with any  
20 of your fellow Lehman employees about the topic  
21 of compensation at Barclays?  
22 A. Bart McDade.  
23 Q. Can you describe that conversation  
24 with Mr. McDade?  
25 A. Yes. Several of my colleagues were --

Page 16

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 at Lehman during that week, the 15th through the  
3 22nd?  
4 A. No.  
5 Q. Let me just put a full question so  
6 that we have a clear record, okay?  
7 A. Yeah.  
8 Q. Did you have conversations with anyone  
9 during the week of the 15th to the 22nd about  
10 compensation that would be paid to you at  
11 Barclays after the 22nd?  
12 A. No.  
13 Q. I think you referred a moment ago to  
14 people receiving payouts when you left the firm.  
15 What firm were you referring to?  
16 A. Barclays.  
17 Q. And who were those people you were  
18 referring to?  
19 A. Mike Gelband was one. I believe  
20 Kaushik Amin was another.  
21 Q. Anyone else?  
22 A. Not that I recall directly.  
23 I'm sorry. Yeung Lee was another.  
24 Q. Anyone else?  
25 A. That's all I can recall. There were

Page 15

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 who had signed employment agreements were  
3 resigning from the firm and receiving large  
4 payouts upon their leaving the firm, and I  
5 suggested to Bart that it would be fair if I was  
6 treated in a similar way, despite not having a  
7 written contract.  
8 Q. And what did Mr. McDade say to you?  
9 A. He said he agreed and he would talk to  
10 Barclays about that. He was on point for those  
11 sorts of issues with Barclays.  
12 Q. Do you know if he did talk to anyone  
13 at Barclays about you in that regard?  
14 A. I assume he did.  
15 Q. And why do you assume that?  
16 A. Because they approached me with a  
17 deal --  
18 Q. Was the conversation --  
19 A. -- a couple weeks later.  
20 Q. I beg your pardon.  
21 Was the conversation with Mr. McDade  
22 during the week of the negotiations between the  
23 15th and the 22nd?  
24 A. No, it was sometime in late October.  
25 Q. Did you have conversations with anyone

Page 17

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 many people leaving Barclays at that time.  
3 Q. Just as a general matter, when you say  
4 there were many people leaving Barclays, are you  
5 referring to former Lehman employees --  
6 A. Yes.  
7 Q. -- who transferred?  
8 A. Yes.  
9 Q. And then left Barclays?  
10 A. Yes.  
11 Q. And if you know, sir, why were these  
12 people who were leaving Barclays, Gelband, for  
13 example, receiving payouts from Barclays on  
14 their departure?  
15 MR. HUME: Objection. Calls for  
16 speculation.  
17 A. I don't know.  
18 Q. Why did you get payments in the  
19 amounts that you did from Barclays having worked  
20 there for such a short period of time?  
21 MR. KELLEY: I'll make the same  
22 objection.  
23 Q. You can answer, I think.  
24 A. I don't know.  
25 Q. Did you talk to anybody about that?

Page 18

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       A. No.  
3       Q. Were you surprised to receive payments  
4       in that amount from Barclays, having worked  
5       there for such a short period of time?  
6       A. No.  
7       Q. I may have been a bit confused about  
8       the time periods, but when you said you were to  
9       be paid [REDACTED] by -- actually, just remind  
10      me, when did you leave Barclays?  
11      A. November, first week.  
12      Q. When we talked about the bonus to be  
13      paid to you, the [REDACTED] in total, I think  
14      you had told me it would be paid in November and  
15      then in February?  
16      A. Yes. Uh-huh.  
17      Q. You left before the February payment  
18      would have come due, correct?  
19      A. Yes.  
20      Q. Do you know why they paid you the  
21      second piece?  
22      A. It was agreed that they would pay me.  
23      Q. When was it agreed? At the time you  
24      left or at some time before that?  
25      A. When I was leaving, as long as I

Page 20

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       my record.  
3       I think it was called for by the  
4       subpoena. I also think it would be called  
5       for by our document request to Barclays.  
6       MR. HUME: I think it's from November,  
7       a different kind of agreement. That's the  
8       only reason. We'll look for it.  
9       MR. GAFFEY: If you could, and if --  
10      Can we go off the record for a minute?  
11      (Discussion off the record.)  
12      BY MR. GAFFEY:  
13      Q. Now, when you met, Mr. Kirk, with  
14      Mr. Hume or people from his firm, did you talk  
15      about events during a time period other than the  
16      time you were employed by Barclays?  
17      MR. KELLEY: Objection. Privileged.  
18      MR. GAFFEY: I think I can inquire to  
19      find out -- a yes or no will tell me whether  
20      or not I can press on the privilege point.  
21      Q. If you just answer yes or no.  
22      MR. KELLEY: No, I'll make the same  
23      objection.  
24      Q. When did you meet with the lawyers for  
25      Barclays?

Page 19

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       didn't compete with them or solicit their  
3       employees for six months, I was paid -- I would  
4       be paid those amounts of money.  
5       Q. Was the non-compete/non-solicitation  
6       in a written agreement?  
7       A. Yes.  
8       Q. Did you have a written agreement  
9       concerning your departure from Barclays?  
10      A. Yes.  
11      Q. That went beyond the non-compete  
12      and -- withdraw. That's a terrible question.  
13      When did you sign the written  
14      agreement with Barclays?  
15      A. Sometime in November.  
16      Q. Do you have a copy of that agreement?  
17      A. I do.  
18      Q. Did you bring it with you?  
19      A. No.  
20      Unless you brought it.  
21      MR. ENRIGHT: No.  
22      MR. GAFFEY: Just for the record, I  
23      should say I think it's probably called for  
24      by the subpoena. We don't have to have a  
25      colloquy about it now. I just want to make

Page 21

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       A. Last Thursday.  
3       Q. Who was present?  
4       A. Mr. Hume and -- who was the other?  
5       MR. KELLEY: If you know.  
6       A. I don't remember that guy's name.  
7       Q. And I take it Mr. Kelley or people  
8       from his firm were there as well?  
9       A. Yes.  
10      Q. Anyone else other than lawyers from  
11      Mr. Kelley's firm or Mr. Hume's firm?  
12      A. No.  
13      Q. Did you review any documents? Just  
14      answer that yes or no, please.  
15      A. Yes.  
16      Q. Did any of those documents have the  
17      effect of refreshing your recollection about the  
18      events concerning the sale of assets from Lehman  
19      to Barclays?  
20      A. Some.  
21      Q. Which ones?  
22      A. I don't remember specifically.  
23      Q. Are there any that you remember  
24      specifically that refreshed your recollection  
25      about matters?

Page 22

**HIGHLY CONFIDENTIAL - A. KIRK**

A. Not in particular.

**Q. In general?**

A. Not in -- generally, yes.

**Q. Did those documents cover a time period prior to -- on or prior to September 22?**

MR. KELLEY: I object to that.

MR. GAFFEY: I'm not sure of the nature of the objection, David.

**Q. Can you answer it?**

MR. KELLEY: Privileged.

MR. HUME: We would assert the same objection.

MR. GAFFEY: Do you contend you have a privilege with this witness?

MR. HUME: I think the objection -- I assume what you're questioning is to try to attack this privilege.

MR. GAFFEY: I'm not attacking the privilege. I'm just trying to find out if you have a basis to assert it.

Do you contend you have a privilege?

MR. HUME: Yes, I think that your motion suggested that there were fiduciary breach claims that you were considering as

Page 23

**HIGHLY CONFIDENTIAL - A. KIRK**

to senior Lehman officers and as part of your investigation of potential claims against Barclays, but the same theory would give rise to claims against the officers and against Barclays. So, yes, I think we do have a common interest privilege in that we both deny those claims.

MR. GAFFEY: I'll leave that, but I don't want to have a colloquy on the record. I disagree.

BY MR. GAFFEY:

**Q. Let's talk about that week, the week in September that's brought us here. Can you tell me, sir, as a general matter, did you play any role in the negotiations of the agreement between Lehman and Barclays that led to the sale of assets to Barclays.**

(The witness confers with Mr. Kelley.)

A. Is the week you're referring to the 15th through the 21st?

**Q. Yes. Well, let me reframe it because you asked that question. At any point during September of 2008, were you involved in any discussions or negotiations with Barclays?**

Page 24

**HIGHLY CONFIDENTIAL - A. KIRK**

A. Yes.

**Q. When?**

A. I was involved in discussions that went from Friday, the 12th of September, until Sunday, the 14th, of the transaction that ultimately failed, and I was asked to participate in the discussions, facilitate the discussions starting Friday morning, the 19th.

**Q. So if I understand your answer correctly, you're not involved in any discussions or negotiations with Barclays in the period from the 15th through the 18th?**

A. That is correct.

**Q. Okay. Describe for me, if you would, generally the nature of what you did in connection with the negotiations from the 12th to the 14th, that is, from the Friday to the Sunday?**

A. Generally, I helped organize the due diligence of the assets of Lehman Brothers that I was responsible for specifically and helped coordinate with some of the other departments meetings that would take place with Barclays.

In addition, I was down at the Federal

Page 25

**HIGHLY CONFIDENTIAL - A. KIRK**

Reserve both Saturday and Sunday, so I participated in probably two different discussions with Barclays on Saturday and Sunday.

**Q. And what was the -- actually, if you don't mind, just so we have some term we can use and I don't have to keep saying it this way, could you give me, you referred to the assets you were responsible for specifically. What were those assets called?**

A. The global principal business.

**Q. What was the nature of the transaction that was being discussed from the Friday and the Saturday and the Sunday, the 12th through the 14th?**

A. The nature of that transaction was Barclays was going to buy all of Lehman Brothers.

**Q. Do you know what the structure of that transaction was? Was it an asset purchase? Stock purchase? Did you have any sense of that?**

A. It was a -- I'm not an M&A expert, but I believe they were going to assume the debt and other contractual obligations of Lehman

Page 26

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2 Brothers. They were going to not assume the  
3 preferred stock of Lehman Brothers and they were  
4 going to pay a nominal, less than a dollar, per  
5 share price for part of the equity and they were  
6 going to spin off the real estate and private  
7 equity positions into a new company which would  
8 be capitalized with debt by a consortium of  
9 lenders and have as its equity capital the  
10 preferred stock of Lehman Brothers and the  
11 equity.  
12       **Q. And you said that that transaction**  
13 **failed. Why did that transaction fail, do you**  
14 **know?**  
15       A. I was told by Bart McDade that the FSA  
16 had turned down the application to close that  
17 transaction.  
18       **Q. When were you told this by Mr. McDade?**  
19       A. Sunday around noon.  
20       **Q. Now, did you have any role in those**  
21 **negotiations, again I'm on the 12th through the**  
22 **14th, other than as you described, the sense I'm**  
23 **getting is primarily involved with due diligence**  
24 **for the global principal business.**  
25       A. Yes, we had -- I spent most of my time

Page 28

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **Lehman's books to personnel from Barclays?**  
3       A. I don't recall specifically, but  
4 probably. We were down at the Federal Reserve  
5 in rooms across the hallway.  
6       **Q. During the period from Friday, the**  
7 **12th, through Sunday, the 14th, were you dealing**  
8 **with any particular people at Barclays who you**  
9 **could name?**  
10       A. Archibald Cox. Bob Diamond. Rich  
11 Ricci. Michael Klein, as their agent.  
12       **Q. Anyone else?**  
13       A. Those are the ones I recall.  
14       **Q. And was there a principal -- were**  
15 **there a group of people you would describe as**  
16 **the principal negotiators for Lehman? Again,**  
17 **I'm in the 12th through the 14th.**  
18       A. Mark Shafir, who was head of M&A; Bart  
19 McDade, who was president; and via telephone,  
20 Dick Fuld.  
21       **Q. Anyone else you would characterize,**  
22 **that you would describe as Lehman's principal**  
23 **negotiators?**  
24       A. I was the advisor. I believe,  
25 although I don't know for sure, I don't have any

Page 27

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2 trying to coordinate due diligence with our  
3 principals and the rest of the street, meaning  
4 Goldman Sachs, Citigroup, First Boston, et  
5 cetera, around the value of those assets which  
6 they were going to make a loan to the spun-off  
7 company.  
8       **Q. And were Barclays personnel involved**  
9 **in that process?**  
10       A. Not in the due diligence process, no.  
11       **Q. Were you in touch with Barclays**  
12 **personnel about this due diligence process?**  
13       A. There were some joint meetings that  
14 were arranged between Goldman Sachs and  
15 Citigroup as point for the street and Barclays  
16 and Lehman Brothers together. Barclays  
17 personnel were obviously in those meetings.  
18       **Q. To your knowledge, at any point in**  
19 **that period from Friday to Sunday were people**  
20 **from Barclays given an opportunity to review**  
21 **Lehman's books for due diligence purposes?**  
22       A. Yes, I believe they continued to do  
23 due diligence over the weekend.  
24       **Q. And did you have any involvement in**  
25 **that project, that process, giving access to**

Page 29

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2 direct knowledge, but I have secondhand  
3 knowledge that Skip McGee was involved.  
4       **Q. Anyone else?**  
5       A. That's all I know.  
6       **Q. What's the basis of your secondhand**  
7 **knowledge that McGee was involved?**  
8       A. Mark Shafir would call Skip from the  
9 Federal Reserve.  
10       **Q. After that transaction failed, did**  
11 **there come a time when you learned that**  
12 **negotiations had begun again between Barclays**  
13 **and Lehman?**  
14       A. Late Sunday night sometime between 11  
15 and 2 in the morning.  
16       **Q. Would you describe that to me? How**  
17 **did you learn it? Where were you when you**  
18 **learned it?**  
19       A. I believe I was in Bart McDade's  
20 office, and he mentioned that Barclays had --  
21 they had had contact with Barclays and Barclays  
22 was interested -- "they" meaning Dick himself,  
23 Skip and Barclays was interested in pursuing an  
24 acquisition of the U.S. businesses of Lehman  
25 Brothers.

Page 30

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 Q. Did he tell you anything more than  
3 that? Who called who or anything that was said  
4 in the conversation?

5 A. No, nothing more than that.

6 Q. Who else was present when you learned  
7 this from Mr. McDade on Sunday night?

8 A. I don't recall specifically, but  
9 probably Mike Gelband.

10 Q. I should tell you, and I should have  
11 said this upfront, I don't want you, please, to  
12 speculate during the day.

13 A. Okay.

14 Q. Once or twice you've answered by  
15 saying "probably," and it's common usage, but if  
16 you can give me your memory of things, as you  
17 have been, tell me when you'd have to speculate,  
18 okay --

19 A. Okay.

20 Q. -- so the record will be clear.

21 So do you know if Mr. Gelband was in  
22 that conversation?

23 A. I don't recall.

24 Q. Now, do you know if that conversation  
25 took place before or after Lehman filed for

Page 31

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 bankruptcy protection?

3 A. I don't remember exactly when the firm  
4 filed, but that's a matter of record, so ...

5 Q. Well, do you know, do you remember  
6 when you learned, first learned the firm was  
7 going to file? Withdrawn.

8 Did you know before the firm filed  
9 that it was going to do so?

10 A. Yes.

11 Q. When did you learn, first learn that  
12 the firm was going to file?

13 A. After the board meeting on Sunday  
14 night, approximately 8 o'clock.

15 Q. Did you attend that board meeting?

16 A. No.

17 Q. From whom did you learn the substance  
18 of the board meeting?

19 A. I don't recall.

20 Q. And the conversation with Mr. McDade  
21 about renewed negotiations with Barclays, did it  
22 take place after the board meeting?

23 A. Yes.

24 Q. Did Mr. McDade ask you to do anything  
25 in connection with these renewed negotiations?

Page 32

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 A. No.  
3 Q. Did anyone ask you to do anything in  
4 connection with these new renewed negotiations?

5 A. No.

6 Q. Did there come a time when you learned  
7 the negotiations --

8 A. I'm sorry.

9 Q. Beg your pardon. Go ahead.

10 A. No, not that evening.

11 Q. Not that evening, okay.

12 Did come a time where you were asked  
13 to perform some tasks or do something in  
14 connection with the negotiations?

15 A. Yes.

16 Q. And when did that happen?

17 A. Late Thursday night, the 18th of  
18 September.

19 Q. I'm coming there.

20 Did there come a time when you learned  
21 there was an agreement reached between Lehman  
22 and Barclays concerning the sale of Lehman  
23 assets to Barclays?

24 A. Yes.

25 Q. When did you learn that?

Page 33

1 HIGHLY CONFIDENTIAL - A. KIRK

2 A. Sometime Tuesday.

3 Q. From whom did you learn that?

4 A. I don't recall.

5 Q. Did you learn whether that agreement  
6 was reduced to a writing?

7 A. No.

8 Q. Have you ever seen any -- the written  
9 agreement, have you ever seen a written  
10 agreement between Lehman and Barclays concerning  
11 the asset sale?

12 A. No.

13 Q. So you learn on maybe the Tuesday that  
14 there's a deal between Lehman and Barclays, and  
15 then -- and on late Thursday night you're asked  
16 to participate in some way.

17 How are you spending your time between  
18 the Tuesday and Thursday?

19 A. I'm spending, between really Sunday  
20 night and Thursday, I was spending all my time  
21 attempting to help coordinate the risk reduction  
22 and risk management of the firm so it could  
23 survive for a few days to get to closure.

24 Q. Now, did those -- now I'm in the  
25 period from, that you just described, from the

Page 34	Page 35
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       <b>Sunday up until Thursday.</b></p> <p>3       A. Uh-huh.</p> <p>4       <b>Q. Are you working with any people from</b></p> <p>5       <b>Barclays in connection with those activities?</b></p> <p>6       A. I don't recall specifically working</p> <p>7       with Barclays employees. Just Lehman employees.</p> <p>8       <b>Q. Were you in communications with</b></p> <p>9       <b>Barclays employees?</b></p> <p>10      A. Not directly. I would have</p> <p>11      communicated to our finance staff and they would</p> <p>12      have communicated to Barclays.</p> <p>13      <b>Q. And who on the finance staff?</b></p> <p>14      A. Ian Lowitt, Paolo Tonucci.</p> <p>15      <b>Q. Did you also deal with Martin Kelly?</b></p> <p>16      A. Maybe once, twice.</p> <p>17      <b>Q. When you learned about a deal between</b></p> <p>18      <b>Lehman and Barclays having been concluded, what</b></p> <p>19      <b>was your understanding of the nature of the</b></p> <p>20      <b>deal?</b></p> <p>21      A. That I was -- that it was going to be</p> <p>22      an asset purchase deal and that they were going</p> <p>23      to purchase some amount of assets and assume the</p> <p>24      employees of Lehman, some of the limited</p> <p>25      obligations of Lehman Brothers.</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       <b>Q. Did you have an understanding of the</b></p> <p>3       <b>asset components that were going to be</b></p> <p>4       <b>purchased?</b></p> <p>5       A. No.</p> <p>6       <b>Q. Did you ever learn what asset</b></p> <p>7       <b>components were going to be purchased?</b></p> <p>8       A. Are you specifically asking about the</p> <p>9       deal that was struck on that Tuesday?</p> <p>10      <b>Q. Yes.</b></p> <p>11      A. No.</p> <p>12      No, let me be more specific.</p> <p>13      <b>Q. Sure.</b></p> <p>14      A. I got an e-mail that said they were</p> <p>15      going to purchase the building and a pool of</p> <p>16      other broadly defined assets.</p> <p>17      <b>Q. Who did you get that e-mail from?</b></p> <p>18      A. Ajay Nagpal.</p> <p>19      <b>Q. Could you spell that so we have it in</b></p> <p>20      <b>the record, please?</b></p> <p>21      A. A-J-A-Y N-A-G-P-A-L.</p> <p>22      <b>Q. What understanding did you have of the</b></p> <p>23      <b>constituent parts of the pool of the defined</b></p> <p>24      <b>assets apart from the building?</b></p> <p>25      A. None.</p>
Page 36	Page 37
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       <b>Q. Did you have an understanding who the</b></p> <p>3       <b>principal negotiators for Lehman of that</b></p> <p>4       <b>transaction were?</b></p> <p>5       A. I understood it to be Mark Shafir,</p> <p>6       Skip McGee.</p> <p>7       <b>Q. Did Mr. McDade have any role in those</b></p> <p>8       <b>negotiations, to your understanding?</b></p> <p>9       A. I believe he did.</p> <p>10      <b>Q. But you wouldn't describe him as one</b></p> <p>11      <b>of the principal negotiators?</b></p> <p>12      A. He might have been.</p> <p>13      <b>Q. Do you have a reason to think he might</b></p> <p>14      <b>have been? Is it that --</b></p> <p>15      A. He was the president of the firm.</p> <p>16      <b>Q. But other than his title, do you have</b></p> <p>17      <b>a basis for thinking he might have been one of</b></p> <p>18      <b>the principal negotiators?</b></p> <p>19      A. No.</p> <p>20      <b>Q. Did you talk to Shafir about the</b></p> <p>21      <b>negotiations?</b></p> <p>22      A. No.</p> <p>23      <b>Q. Did you talk to McGee about the</b></p> <p>24      <b>negotiations?</b></p> <p>25      A. No.</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       <b>Q. Did you have an understanding of the</b></p> <p>3       <b>nature of the liabilities that Barclays was</b></p> <p>4       <b>going to assume under the agreement?</b></p> <p>5       A. Not at the time.</p> <p>6       <b>Q. Did there come a time when you did</b></p> <p>7       <b>gain an understanding of the liabilities</b></p> <p>8       <b>Barclays was going to assume under the</b></p> <p>9       <b>agreement?</b></p> <p>10      A. A very cursory understanding on</p> <p>11      Friday.</p> <p>12      <b>Q. That's on Friday, the 19th?</b></p> <p>13      A. Correct.</p> <p>14      <b>Q. From whom did you get that</b></p> <p>15      <b>understanding?</b></p> <p>16      A. Paolo Tonucci.</p> <p>17      <b>Q. What did Mr. Tonucci tell you in that</b></p> <p>18      <b>regard?</b></p> <p>19      A. That there were two categories. One</p> <p>20      was assumption of certain trade liabilities and</p> <p>21      the other was the assumption of compensation</p> <p>22      liabilities, and that they together totaled</p> <p>23      somewhere over \$4 billion.</p> <p>24      <b>Q. Did you talk to anyone other than</b></p> <p>25      <b>Mr. Tonucci about these assumed liabilities that</b></p>

Page 38

**HIGHLY CONFIDENTIAL - A. KIRK**  
totaled somewhere over \$4 billion?

A. During Friday, the amount of those liabilities were referenced several times by Paolo, who was attempting to accurately estimate them, and by Barclays in their description of the deal later in the afternoon.

Q. Let's go back to the earlier part of the week. I swear I'm getting to Thursday and Friday.

A. That's all right.

Q. Now I'm still sort of in the early part of the week.

Were you asked to be involved in any assessment of the value of the pool of securities that was to be sold?

A. No.

Q. Did you ever come to understand that the agreement between Lehman and Barclays included a loss, an overall loss against the amount at which those assets were carried on Lehman's books?

A. No.

Q. Did you ever at any time have an understanding that that agreement involved a

Page 39

**HIGHLY CONFIDENTIAL - A. KIRK**  
discount of any kind given to Barclays against the amount shown on Lehman's books of those assets?

A. No.

Q. Apart from your counsel and counsel from Mr. Hume's firm, have you spoken to anybody about that topic?

A. No.

Q. When you learned about the sale of a pool of assets, and again, apart from the real estate on Tuesday, did you have an understanding it was to be sold at book value?

A. I didn't have an understanding one way or the other.

Q. So on the Monday, the Tuesday, the Wednesday and during the day on Thursday, if I understand what we've talked about so far correctly, you're essentially involved in managing risk?

A. Yes.

Q. And the purpose, apart from the inherent reason for doing it --

A. Keep the firm funded.

Q. Did you have an understanding, while

Page 40

**HIGHLY CONFIDENTIAL - A. KIRK**  
you were doing that, of how long you needed to do that? What the timetable was for things?

A. We knew we were -- I believe they were trying to schedule a meeting with the bankruptcy court on Friday evening, Friday afternoon.

It was really a day-to-day operation.

Q. And during that day-to-day operation, did any of your activities involve entering into or addressing repurchase agreements, repos?

A. Some of them.

Q. Could you describe that for me? What was the nature of your activities in connection with repos?

A. The firm had a number, a large number of clients whose assets had been trapped under repurchase agreements in the European subsidiaries, so we spent some time trying to figure out how we were going to help solve those issues. That was a big piece of it.

And then we were also trying to shrink the matched book because it used liquidity at the firm as a way to raise liquidity, so where you would finance client positions with other client's money.

Page 41

**HIGHLY CONFIDENTIAL - A. KIRK**

Q. Financing of client positions with other client's money; is that what you're talking about when you talk about the matched book?

A. Yes.

Q. And by shrinking the matched book, you're reducing that level of activity of --

A. Yes.

Q. -- using --

A. And you're -- it would -- I was told it would free up liquidity.

Q. And did you have any involvement, sir, in connection with the Repurchase Agreement that Lehman had with the Fed?

A. Only -- my only involvement there was I was at the Fed when they told us Sunday evening that they would lend us money to pay back the tri-party repo lenders the following morning.

Q. And did Lehman enter into a Repurchase Agreement with the Fed for that purpose, do you know?

A. Yes, they did.

Q. Were any of your activities devoted to

Page 42

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2   the making of that Repurchase Agreement with the  
3   Fed?  
4     A. No.  
5     Q. Did there come a time when the Fed  
6   made it known it wanted to come out of that  
7   Repurchase Agreement, to your knowledge?  
8     A. Yes.  
9     Q. Describe to me how you came to learn  
10  that.  
11  A. I don't recall specifically who told  
12  me.  
13  Q. As a general matter, tell me what you  
14  remember about learning that the Fed wanted to  
15  get out of the Repurchase Agreement with Lehman?  
16  A. At some point on Wednesday, the Fed  
17  said that they wanted to get paid back, I  
18  believe it was Wednesday, and Lehman had to  
19  figure out how to arrange alternative financing,  
20  and there was only one party that would provide  
21  that financing and that was Barclays.  
22  Q. And what did you do in connection with  
23  those activities, if anything?  
24  A. I was not a repo expert. I didn't --  
25  I was not -- I'm not a repo expert. I did not

Page 44

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2   think you also told me there was a conversation  
3   late on Thursday night that began your Friday  
4   activities?  
5     A. Yes.  
6     Q. Okay. Let's talk about that one  
7   first. Who's the conversation with, where are  
8   you, and what's the content of the conversation?  
9     A. I'm at home. I get a call from Bart  
10  McDade. He informs me that Mark Shafir has left  
11  Lehman Brothers and that he needs some help  
12  wrapping up the Barclays deal the following day.  
13  Q. Had Shafir left on the Thursday?  
14  A. I believe so.  
15  Q. You described Shafir as one of the  
16  principal negotiators. As of the Thursday, to  
17  your knowledge, has he now gone?  
18  A. Yes.  
19  Q. Did McDade have anything to say about  
20  that topic?  
21  A. He said he went -- he quit and he went  
22  to work at Citigroup.  
23  Q. Other than telling you that Shafir had  
24  quit and gone to work at Citigroup, did  
25  Mr. McDade have anything to say about

Page 43

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2   participate in those.  
3     Q. How did you learn about those  
4   activities? From whom?  
5     A. I don't recall specifically.  
6     Q. Do you have any general recollection?  
7     A. Probably the finance staff.  
8     Q. And that would be Tonucci?  
9     A. Ian Lowitt or Tonucci, one or the  
10  other.  
11  MR. GAFFEY: Can we take a five-minute  
12  break?  
13  THE WITNESS: Sure.  
14  (Recess; Time Noted: 10:21 A.M.)  
15  (Time Noted: 10:29 A.M.)  
16  BY MR. GAFFEY:  
17  Q. In a question I asked you a little  
18  while ago, Mr. Kirk, you clarified by saying,  
19  "You mean the agreement made on Tuesday?" Did  
20  there come a point where you learned that the  
21  deal had changed?  
22  A. Friday.  
23  Q. Okay. Here we are. Tell me about  
24  Friday.  
25  Actually, let me just back up. I

Page 45

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2   Mr. Shafir's departure --  
3     A. No.  
4     Q. -- on this Thursday?  
5     A. No.  
6     Q. Did Mr. McDade say anything about the  
7   departure, Shafir's departure having any impact  
8   on the deal?  
9     A. He said that, given his departure, he  
10  would need extra help and he asked for my help.  
11  Q. What did he ask you to do?  
12  A. That evening he did not specify what  
13  he wanted me to do.  
14  Q. Tell me what Mr. McDade said and what  
15  you said in that conversation on Thursday night,  
16  as best you remember.  
17  A. He said that Mark Shafir has quit,  
18  gone to Citigroup, I need some help wrapping  
19  this up tomorrow, can you help me, I said yes.  
20  Q. That's the entire conversation as you  
21  remember it?  
22  A. Yes.  
23  Q. Did you ask him what he needed you to  
24  do?  
25  A. I think I asked him, Do you want me to



Page 46

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       come in the office tonight? He said no, he was  
3       already home. I said, What time do you want me  
4       to come in the morning? And he said, you'll get  
5       an e-mail about an early morning meeting.  
6       **Q. Did you speak to anyone else that**  
7       **Thursday night about the deal after you spoke to**  
8       **Mr. McDade?**  
9       A. Not that I recall.  
10      **Q. So let's just get through the rest of**  
11      **Thursday night, okay? After you have the**  
12      **conversation with Mr. McDade, he says he needs**  
13      **your help, there will be an early morning**  
14      **meeting.**  
15      **Did you do anything else with respect**  
16      **to the transaction on the Thursday night?**  
17      A. I don't recall specifically or  
18      generally.  
19      **Q. On the Thursday, sir -- I'll show you**  
20      **a document about this in a second -- do you**  
21      **recall reaching out to others in the firm,**  
22      **including Kaushik Amin and Gerald Donini and**  
23      **Eric Felder, to ask them to put together**  
24      **information to -- that would be necessary to**  
25      **portray a fire sale liquidation of the**

Page 48

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       A. I believe we've determined that was a  
3       wireless account that was used in the late '90s  
4       when there were wireless pagers, if you recall  
5       those devices.  
6       **Q. Okay. Uh-huh.**  
7       A. But had been inoperative but still  
8       alive in the system.  
9       **Q. Okay. You're about to solve one of**  
10      **the great mysteries of this case.**  
11      A. Yeah, we had --  
12      **Q. Did you have that account? Are you**  
13      **sending it to your home e-mail?**  
14      A. I don't -- no, this is auto-forwarded  
15      by the computers.  
16      **Q. Okay.**  
17      A. So like they auto-forward to your  
18      BlackBerry, these are things that auto-forward  
19      from the --  
20      **Q. You would love it right now if I said**  
21      **I have nothing further, but that wasn't the key**  
22      **question, so let me go to the exhibit that I**  
23      **showed you.**  
24      A. We had to ask ourselves the same  
25      question when we saw this.

Page 47

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       **securities?**  
3       A. I may have done so by e-mail.  
4       **Q. Okay. I'll show you the e-mail, but**  
5       **first, if you don't mind, what's your**  
6       **independent recollection of that, if you have**  
7       **any?**  
8       A. My independent recollection is that I  
9       got an e-mail for a scheduled meeting the  
10      following day and I got a request, I didn't  
11      recall when it was specifically, to help  
12      organize a valuation exercise on behalf of Barry  
13      Ridings. I didn't recall whether that was  
14      Thursday night or Friday morning.  
15      **Q. And who is Barry Ridings?**  
16      A. A Lazard restructuring banker hired by  
17      the firm to testify in bankruptcy court.  
18      **Q. And who made this request of you?**  
19      A. I don't recall specifically who asked  
20      me to do that.  
21      **Q. I'm showing you, Mr. Kirk, what has**  
22      **been marked at a prior deposition as Exhibit 3**  
23      **an e-mail from you to an address**  
24      **4955214@archwireless.net. Is that your wireless**  
25      **account?**

Page 49

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       **Q. Okay. Take a minute to look through**  
3       **what was marked as Exhibit 3, sir. I have a**  
4       **couple questions for you about it.**  
5       **(Document review.)**  
6       A. Okay.  
7       **Q. In this, who is Daniel Flores, the man**  
8       **from whom the underlying e-mail is sent?**  
9       A. I believe Daniel worked for Mark  
10      Shapiro. It's indicated he worked in the  
11      restructuring group that was run by a fellow  
12      named Mark Shapiro at Lehman.  
13      **Q. And in the e-mail, you see that**  
14      **Mr. Flores recounts, "Alex Kirk suggested we**  
15      **contact each of you to help us understand on a**  
16      **theoretical basis what would happen in a fire**  
17      **sale liquidation of the securities that are**  
18      **being transferred to Barclays as part of the**  
19      **proposed transaction."**  
20      **Did you have a conversation or**  
21      **communication with Mr. Flores about that topic?**  
22      A. This indicates I must have.  
23      **Q. Apart from seeing it written on this**  
24      **e-mail, do you have any recollection?**  
25      A. I don't recall.

Page 50

1           HIGHLY CONFIDENTIAL - A. KIRK  
2       **Q. Does this e-mail refresh your**  
3 **recollection in any way of a communication with**  
4 **Mr. Flores about that topic?**  
5       A. Again, I assume that I must have  
6 talked to him.  
7       **Q. But again, sir, apart from seeing it**  
8 **on the page in front of you, do you have a basis**  
9 **for that assumption?**  
10      A. No.  
11      **Q. You said that that was -- well, let me**  
12 **continue down into Mr. Flores' e-mail where he**  
13 **talks about, "We will be leaving on your desks a**  
14 **list of the top 100 positions in each of your**  
15 **area's expertise." Did that exercise take**  
16 **place, to your knowledge?**  
17      A. Yes, I believe it did.  
18      **Q. And what was the result of the**  
19 **exercise? Was there a fire sale liquidation**  
20 **scenario put together?**  
21      A. So these positions were delivered to  
22 each of the recipients of this e-mail, Kaushik  
23 Amin, Charlie Spero, Eric Felder, Gerry Donini,  
24 were the various business heads in charge of  
25 parts of fixed income or equities, and they

Page 52

1           HIGHLY CONFIDENTIAL - A. KIRK  
2 determine in any comprehensive way the values.  
3 So we adjourned the meeting with the -- with a  
4 plan that Barry Ridings would talk to each of  
5 these individuals separately closer to the end  
6 of the day when they might have a better sense.  
7       **Q. Do you know if Mr. Ridings did that?**  
8       A. I don't know that.  
9       **Q. Did he speak to you at all?**  
10      A. Not about this topic. I saw him later  
11 in the day in a meeting.  
12      **Q. Let me just back up a little bit. Did**  
13 **Ridings know you were organizing this project?**  
14      A. Yes.  
15      **Q. Would he have known you're the contact**  
16 **guy on it?**  
17      A. Yes. I probably called him and told  
18 him call these people directly.  
19      **Q. Did you have any conversations that**  
20 **you recall with Mr. Ridings about the need for a**  
21 **liquidation scenario to be analyzed?**  
22      A. I assume he clarified the reasoning as  
23 a test for the court.  
24      **Q. When you say you assume that, what's**  
25 **the basis of that assumption?**

Page 51

1           HIGHLY CONFIDENTIAL - A. KIRK  
2 would have been -- had those delivered early in  
3 the morning, and then we were attempting to have  
4 an 11 o'clock meeting to go over the findings of  
5 their -- their assumptions and analysis about  
6 the value of those positions.  
7       **Q. And did that meeting take place?**  
8       A. Yes, it did.  
9       **Q. Were you at it?**  
10      A. Yes.  
11      **Q. Who was at the meeting?**  
12      A. Mike Gelband, Kaushik Amin, Charlie  
13 Spero and Gerry Donini, and Daniel Flores was  
14 there as well as Gerry Reilly.  
15      **Q. Was James Seery there?**  
16      A. He might have been. I recall he was  
17 there.  
18      **Q. You do recall he was there?**  
19      A. I recall he was there.  
20      **Q. Was a determination made about**  
21 **liquidation value?**  
22      A. No. The data had been delivered in --  
23 the position data had been delivered in a way  
24 that, given the short period of time, a couple  
25 hours, the business heads were not able to

Page 53

1           HIGHLY CONFIDENTIAL - A. KIRK  
2       A. I vaguely recall having a conversation  
3 with him.  
4       **Q. Let's go to the early morning of**  
5 **Friday, the 19th. You spoke a moment ago about**  
6 **getting a call from Mr. McDade. Shafir's quit.**  
7 **He asked for your help, can you come to meet**  
8 **with him in the morning. Did you do that?**  
9       A. Yes.  
10      **Q. And where was the meeting?**  
11      A. It was a -- I believe it was in my  
12 office.  
13      **Q. In your office, sir?**  
14      A. Yes.  
15      **Q. Who was in attendance?**  
16      A. Ian Lowitt, Chris O'Meara, Gerry  
17 Reilly, Paolo Tonucci. I think that was it.  
18      **Q. Was Mr. McDade there?**  
19      A. I don't believe, no, I don't believe  
20 he was there.  
21      **Q. Now, in your conversation with**  
22 **Mr. McDade the night before, he had told you**  
23 **Shafir quit, he told you he needed your help,**  
24 **you offered to come in, he said come in in the**  
25 **morning, if I remember your testimony right, and**

Page 54

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 that's not what governs, that's basically the  
3 topics you covered with McDade on Thursday  
4 night.

5 So here you are in a meeting with  
6 Lowitt, O'Meara, Reilly and Tonucci. Do you  
7 learn more at the meeting about the nature of  
8 the help that you're going to have to give?

9 A. They broadly outlined the first  
10 transaction. That was a quick summary. Then we  
11 discussed an issue that had come up earlier that  
12 morning around JPMorgan as our clearing bank  
13 shutting down Lehman's DTC account and what  
14 effect that would have on the transaction as  
15 planned.

16 Q. Now, you referred to -- you said they  
17 broadly outlined the first transaction. By the  
18 Friday morning, is it your understanding there's  
19 a second transaction, a subsequent transaction?

20 A. By the time we had this meeting --

21 Q. Uh-huh.

22 A. -- it was my view, my opinion, that  
23 there would have to be a reworking of the  
24 transaction because a vast majority of those  
25 securities that had been planned for transfer

Page 55

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 were held at JPMorgan. There was a -- and  
3 JPMorgan had a dispute of some sort about the  
4 transfer of the repo with Barclays, which was  
5 described to me by Mike Keegan, and in addition  
6 to that, they shut down Lehman's -- they closed  
7 down Lehman's DTC account, which led me to  
8 believe that JPMorgan would not cooperate and  
9 transfer the aforementioned securities to  
10 Barclays on that Friday.

11 Q. When had you spoken to Mike Keegan?

12 A. I got up and I went to the office  
13 about 5 A.M. and I ran into him about 5:30 in  
14 the morning.

15 Q. Had you met Mr. Keegan before?

16 A. I had met him the week before during  
17 the due diligence process.

18 Q. So you say "they," that's some  
19 combination of Lowitt, O'Meara, Reilly and  
20 Tonucci, broadly outlined the first transaction  
21 to give you a quick summary?

22 A. Yes.

23 Q. How did they summarize -- tell me what  
24 you remember about their broad outline of the  
25 first transaction, the quick summary that they

Page 56

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 gave you.

3 A. They summarized it as a purchase of  
4 the building, purchase of assets, and an  
5 assumption of this 4 billion, 4 and a quarter  
6 billion dollars in liabilities.

7 That discussion ended very quickly  
8 because of my belief that that transaction,  
9 given what had just transpired -- what I had  
10 learned from Keegan and the action that JPMorgan  
11 had taken, that I believe that they would act as  
12 a hostile party towards the closing of this  
13 transaction and that whatever had taken place  
14 before was irrelevant.

15 Q. Did Mr. Tonucci tell you anything  
16 other than there was an assumption of  
17 liabilities in an approximate amount of 4 and a  
18 quarter billion for compensation of payables?

19 A. No.

20 Q. Did you have any knowledge as to how  
21 that number came to be determined?

22 A. No. I was not concerned with that  
23 part of the transaction.

24 Q. I'm sort of away from the Friday  
25 meeting for a moment.

Page 57

1 **HIGHLY CONFIDENTIAL - A. KIRK**

2 A. No.

3 Q. At any point did you come to an  
4 understanding as to how those, those components  
5 of assumed liabilities came to be calculated?

6 A. No. No.

7 Q. When the transaction, the first  
8 transaction was outlined to you by Tonucci,  
9 O'Meara, Reilly and Lowitt, or some combination,  
10 did you have an understanding as to where the  
11 assets would come from to fund those assumed  
12 liabilities?

13 A. I believe there was a schedule,  
14 one-page schedule, which I think you have, that  
15 broadly gave an asset and liability balance  
16 sheet.

17 Q. Have you ever seen that schedule?

18 A. Yes.

19 Q. When did you first see that schedule?

20 A. I believe it was that morning. It was  
21 that morning.

22 Q. Apart from the schedule, did you look  
23 at any other documents that morning?

24 A. No.

25 Q. I'm putting before you what previously

Page 58

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **has been marked as Deposition Exhibit 19.**  
3 A. Yes, that's the schedule.  
4 Q. **And the schedule that you saw that**  
5 **morning was the one with the annotation in the**  
6 **upper right-hand corner "9/16/08, Final SB"?**  
7 A. Uh-huh.  
8 Q. **Do you remember that?**  
9 A. Yes.  
10 Q. **Okay. Who gave you the schedule?**  
11 A. One of the gentleman.  
12 Q. **Do you recall which one?**  
13 A. No.  
14 Q. **Did anybody tell you anything about**  
15 **the schedule?**  
16 A. They briefly described it as an asset  
17 sale that was approximately this size of this  
18 characteristics of the category of assets that  
19 they were going to buy, category of liabilities  
20 that they were going to assume, including  
21 financing liabilities and the aforementioned  
22 cure payment and comp.  
23 Q. **When you refer to the financing**  
24 **liabilities, are you just sort of broadly**  
25 **describing the liabilities opposite the**

Page 60

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 A. No.  
3 Q. **Did you ask?**  
4 A. No.  
5 Q. **Now, present at the meeting was**  
6 **Lowitt, O'Meara, Reilly and Tonucci. Was**  
7 **anybody participating by telephone?**  
8 A. I don't recall.  
9 Q. **Was there any participation in that**  
10 **Friday morning meeting by anybody from Barclays?**  
11 A. No.  
12 Q. **So they broadly outlined the first**  
13 **transaction. They tell you the problem with**  
14 **JPM, one of them or some combination of them.**  
15 **What happens next in that meeting?**  
16 A. We break up. I tell them that I'm  
17 going to go try to shepherd the valuation  
18 process that I have been asked to follow up on  
19 for this 11 o'clock meeting and that I'm going  
20 to try to arrange a meeting with the senior  
21 executives at Barclays to explain to them what  
22 my view was, that this transaction as outlined  
23 couldn't be closed on that Friday night, which  
24 they agreed with.  
25 Oh, I tell them I'm first going to go

Page 59

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **particular assets in ST borrowings, government**  
3 **and agencies?**  
4 A. Yes.  
5 Q. **The ones that add up to 33.9?**  
6 A. Well, in addition, there's the 34.5  
7 below that.  
8 Q. **For collateralized short-term funding,**  
9 **right?**  
10 A. Yes.  
11 Q. **Now, did you have an understanding**  
12 **when you were shown this schedule of where the**  
13 **values for assets -- from where the values for**  
14 **assets were derived?**  
15 A. I don't recall. We quickly moved on  
16 from this.  
17 Q. **Did whoever described the schedule to**  
18 **you, did they give you any description of the**  
19 **role that any of that schedule played in the**  
20 **first transaction?**  
21 A. They described it as the template for  
22 the first transaction.  
23 Q. **And do you know who put together the**  
24 **schedule that was the template for the first**  
25 **transaction? Did they tell you that?**

Page 61

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **inform senior Lehman executives, Bart and Dick,**  
3 **of this problem.**  
4 (Mr. Kelley confers with the witness.)  
5 A. I'm sorry, just to clarify, my  
6 assumption about this being problem -- this  
7 transaction being problematic was agreed to.  
8 The basis for that worry was verified by or  
9 agreed to by Ian Lowitt and Paolo Tonucci in  
10 that meeting.  
11 Q. **As I understand it, your primary**  
12 **activities for the week until this Friday**  
13 **morning meeting had been in risk management --**  
14 A. Uh-huh.  
15 Q. **-- had been in shrinking the matched**  
16 **book, keeping the firm alive so that the Friday**  
17 **hearing had some possibility of succeeding, is**  
18 **that a fair summary?**  
19 A. Yes.  
20 Q. **And you're called into this meeting on**  
21 **Friday morning and told that the transaction**  
22 **that's been on the table all week can't go**  
23 **forward because of this problem. This may seem**  
24 **an odd question, sir, but why are you now the**  
25 **guy that has to call Barclays and call senior**

Page 62

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **management? Did you have an understanding of**  
3 **why you're the lucky winner of that**  
4 **responsibility?**

5 A. Because I volunteered. Yeah, I --

6 Q. Did you have --

7 A. Believe me, I almost had a heart  
8 attack just thinking about that.

9 (Mr. Kelley confers with the witness.)

10 A. That's true. In addition to Mark  
11 Shafir had left the firm, so ...

12 Q. That's sort of implicit in my  
13 question. Why are you the guy who has to step  
14 up to the plate when Shafir leaves? Why not  
15 McGee? Why not Tonucci? Why not Lowitt?

16 A. Because Bart trusted me.

17 Q. So did you go and inform more senior  
18 Lehman executives of the issues of the problem?

19 A. Yes.

20 Q. Okay. Tell me about that. Who did  
21 you contact and what did you tell them, what did  
22 they say to you?

23 A. I contacted Bart, I don't recall who  
24 else was in the meeting exactly, but I walked  
25 in, and there were others, I don't remember who

Page 64

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **being there, or are you assuming again, because**  
3 **of his role, his title, that he might have been?**

4 A. Yes, I'm assuming because of his title  
5 he might have been.

6 Q. But you do recall talking to McDade  
7 about it?

8 A. Yes.

9 Q. Do you recall anyone else other than  
10 McDade to whom you spoke?

11 A. No.

12 Q. And what did Mr. McDade say?

13 A. He said we should have a sit-down with  
14 the Barclays senior team and we should explain  
15 our point of view on this ASAP.

16 Q. And what happened next?

17 A. We had a meeting with Bart, myself,  
18 and then it was Michael Klein, Rich Ricci, and  
19 Mike Keegan from Barclays.

20 Q. Where was the meeting?

21 A. It was in an office on 31 that  
22 Barclays was using as temporary space.

23 Q. And who's there from the Lehman side  
24 of the table?

25 A. Bart and I were there.

Page 63

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 exactly, Fuld, most likely, that the assets and  
3 liabilities that had been assumed to be  
4 transferred in the first transaction were all  
5 held in custody or had to be cleared through  
6 JPMorgan, and because JPMorgan had taken this  
7 hostile action, there was a dispute, which I  
8 didn't understand the exact nature of, with the  
9 transfer of collateral between Barclays and --  
10 between the Fed through JPMorgan to Barclays.

11 I knew at a very high level there was  
12 a dispute between the two firms as to what  
13 collateral was accept -- what collateral was  
14 transferred and what collateral was left at  
15 JPMorgan, and I knew that JPMorgan had shut down  
16 Lehman's DTC account and failed all the  
17 settlements on that Friday, and a combination of  
18 those two pieces of information led me to  
19 believe that JPMorgan wouldn't transfer these  
20 assets on this schedule and liabilities, both  
21 sides, in any normal course.

22 Q. And when you reported this to McDade,  
23 you said -- withdrawn. You said Fuld was there,  
24 most likely.

25 Do you have a recollection of him

Page 65

1 **HIGHLY CONFIDENTIAL - A. KIRK**

2 Q. Anyone else?

3 A. Ian was there as well, I'm pretty  
4 sure.

5 Q. Was Tonucci there?

6 A. I don't remember.

7 Q. Do you recall whether or not with  
8 regard to which ones there were, do you recall a  
9 bigger meeting than that, or is this the  
10 assembly of people that you remember?

11 A. It was an assembly of no more than ten  
12 people total.

13 MR. GAFFEY: Can we go off the record  
14 for a minute?

15 (Discussion off the record.)

16 (Recess; Time Noted: 10:59 A.M.)

17 (Time Noted: 11:09 A.M.)

18 BY MR. GAFFEY:

19 Q. We were, before the break, we were at  
20 this Friday morning meeting, and so I want to go  
21 through in as much detail as I can what happened  
22 at that meeting and who said what.

23 I have a general sense that the JPM  
24 problem has arisen. Did you have a sense, was  
25 there any discussion about the JPM problem being

Page 66

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **related in any way to the Repurchase Agreement**  
3 **with Barclays?**  
4 A. Yes.  
5 Q. Describe that for me. What was your  
6 understanding?  
7 A. So, to be clear, I'm not an expert,  
8 was not an expert on repo, so I was learning  
9 things for the first time that day that I didn't  
10 understand how they actually worked prior to  
11 that. So I got what was a cursory as opposed to  
12 a detailed explanation of the issue, but as I  
13 understood it from the way that Mike Keegan  
14 explained it to me was that the Fed had been  
15 providing a repo for Lehman Brothers earlier in  
16 the week of approximately \$50 billion, that the  
17 Fed had made it known that they wanted to be  
18 repaid on that repo, and that Barclays had  
19 agreed to assume that repo obligation from the  
20 Fed. Without that financing the firm would have  
21 collapsed the next morning.  
22 So the way it was explained to me was,  
23 during the transfer of those -- that loan and  
24 the collateral associated with that loan, there  
25 were many pieces of collateral that Barclays

Page 68

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 A. That JPMorgan and Barclays attempted  
3 to negotiate, but they couldn't complete a  
4 negotiation for a transfer of that collateral.  
5 Q. And when you say Keegan's explanation,  
6 I take it you're talking about the conversation  
7 you had with Keegan before the meeting?  
8 A. Yes.  
9 Q. Okay.  
10 A. The 5:30 in the morning.  
11 Q. And did Keegan give you any level of  
12 detail about why Barclays was uncertain about  
13 some percentage of that collateral?  
14 A. It was collateral that they didn't --  
15 was either they didn't have the expertise to  
16 value or was not transparent, meaning that there  
17 were financing vehicles that Lehman set up that  
18 went into the repo that you couldn't look  
19 through to what was in those financing vehicles.  
20 Q. And did Mr. Keegan give you any  
21 information about what that collateral was, what  
22 type of securities?  
23 A. He didn't know.  
24 Q. Well --  
25 A. In some cases he didn't know. In

Page 67

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 could not value, so they did not accept them in  
3 transfer from the Fed. And mechanically, it was  
4 explained to me the way that worked was, in a  
5 tri-party repo, the Fed transferred all of the  
6 positions to JPMorgan and then JPMorgan began  
7 transferring those positions upon the receipt of  
8 money from Barclays transferred money, and then  
9 they would transfer the positions that secured  
10 that repo.  
11 And at some point during that process,  
12 Barclays became very uncertain as to some  
13 percentage of that collateral, I don't recall  
14 the exact amount, but it was a large number,  
15 maybe as much as, you know, 20 percent of the  
16 collateral, and when Barclays didn't accept  
17 those positions, they, by definition, just got  
18 left at JPMorgan.  
19 They -- so JPMorgan was left with  
20 collateral that they were not comfortable with  
21 but Barclays would not accept, so -- and  
22 JPMorgan, I guess they attempted to negotiate  
23 but couldn't get that negotiation done.  
24 Q. Who was the "they" who attempted to  
25 negotiate?

Page 69

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 other cases it was, yes, it was illiquid and  
3 either high-yield or defaulted or consumer  
4 mortgage securities that were the ones he could  
5 identify that were very hard to value.  
6 Q. I'm hearing this in two categories,  
7 and I want to be sure you and I are on the same  
8 page. There's a component of this collateral  
9 that's hard to value and there's a component  
10 that is not transparent, which may also make it  
11 hard to value --  
12 A. Yes.  
13 Q. -- but some of it's transparent and  
14 hard to value?  
15 A. Yes.  
16 Q. Okay. Did he identify any particular  
17 categories of hard-to-value securities? I get  
18 it, high-yield or mortgage-backed, but did he --  
19 A. Distressed.  
20 Q. Did he use the term "racers" at all?  
21 A. That was the non-transparent category.  
22 Q. Okay. Tell me what Mr. Keegan said to  
23 you about racers.  
24 A. "What are they?"  
25 Q. Anything else?

Page 70

**HIGHLY CONFIDENTIAL - A. KIRK**

A. "And what's in them?" I said, "I don't know." I then went and -- Paolo Tonucci, I directed him to Paolo, who would be able to tell him what was in those various financing vehicles.

Q. Do you know what Paolo Tonucci then spoke to Mr. Keegan about?

A. I don't know.

Q. Did Mr. Keegan say anything else about racers other than he didn't know what they were?

A. He asked how would I find out.

Q. Did Mr. Keegan say anything to you that, in sum or substance, compared the assets that Barclays had agreed to buy in the first transaction, to use your term, and the assets that were in the repo that were the subject of this transfer problem?

A. He summarized it as it was a very different and riskier category of assets.

Q. Was anyone else present when Mr. Keegan and you had this early morning conversation?

A. No.

Q. Did you understand from Mr. Keegan, in

Page 71

**HIGHLY CONFIDENTIAL - A. KIRK**

sum or substance, whether he had spoken to others at Lehman about this problem by the time he had spoke to you?

A. I understood I was the first person he had explained it to, at Lehman that he had explained it to.

Q. When you spoke to him and about this topic, did you let him know that there was a Friday meeting planned with -- that you had been asked to come to an early morning meeting by Mr. McDade?

A. Yes.

Q. And did you tell him you'd get back to him after that meeting to see if there was a solution to this problem?

A. Yes.

Q. So, in the course of that meeting, now we've got the JPM issue, it's been identified, you've had the first transaction outlined to you broadly, the JPM problem --

A. Right.

Q. -- has been also described. What happens next?

A. I'm sorry, so where -- what time of

Page 72

**HIGHLY CONFIDENTIAL - A. KIRK**

day are we now?

Q. I'm sorry. I've got you back at the Friday meeting with -- we're back at the Friday meeting with Bart, yourself, Klein --

A. Okay.

Q. -- Ricci and Keegan.

A. Yeah.

Q. Okay.

A. So at that meeting I walk through -- I summarized the issues, as I understand them, for this dispute with Barclays. I inform Barclays that those executives -- that JPMorgan had shut down Lehman's DTC account, and I made the supposition that that would make it impossible to complete the transaction as contemplated.

Q. And what, if anything, did Mr. McDade have to say about those topics?

A. He said he agreed with me.

Q. Did you speak first in outlining the issues?

A. Yes.

Q. And how did Klein, Ricci and Keegan or any combination of those three men react to that news?

Page 73

**HIGHLY CONFIDENTIAL - A. KIRK**

A. There was some question as to, well, what do we do now? I suggested that the only reasonable course of action would be to proceed with the transaction substituting the repo assets, the assets that Barclays had lent against, for all the other securities that had been contemplated in the transaction and leave the rest of the transaction as was.

Q. So if I understand this -- I want to make sure I understand this correctly. Your suggestion was to take the assets that were the subject of the first transaction roughly outlined in that schedule?

A. Yeah.

Q. And instead of transferring that body of assets, transfer the body of assets that are in the repo, correct?

A. Yes.

Q. Maybe I'm not understanding. Is the problem here, doesn't it involve the assets that are in the repo? Hasn't Mr. Keegan told you that Barclays is uncertain about some components of the repo collateral?

A. So, again, the issue was that it was

Page 74	Page 75
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       my view that JPMorgan would not transfer one</p> <p>3       dollar of one asset unless they got whatever</p> <p>4       they wanted in a negotiation from Barclays or</p> <p>5       anybody else, and even then they wouldn't -- it</p> <p>6       didn't appear that they would do anything but be</p> <p>7       hostile, having shut down our DTC account, which</p> <p>8       is a, I mean, that's a colossal nightmare. You</p> <p>9       know, you've got tens of billions of dollars of</p> <p>10       securities supposed to settle a regular way that</p> <p>11       you've been transacting with your clients, and</p> <p>12       every single one of them fails -- both sides,</p> <p>13       buys and sells.</p> <p>14       <b>Q. How is JPM in a position to shut down</b></p> <p>15       <b>Lehman's?</b></p> <p>16       A. They're our clearing bank.</p> <p>17       So it was, again, my supposition,</p> <p>18       which was confirmed by, you know, the senior</p> <p>19       finance staff and Bart and then finally the</p> <p>20       Barclays guys, that, you know, JPMorgan should</p> <p>21       be viewed as not going to cooperate. And</p> <p>22       Barclays was attempting to reach JPMorgan and</p> <p>23       never got a return call, was my understanding.</p> <p>24       I was told that by probably Gerard LaRocca or</p> <p>25       Keegan, one of them, and hence, you know, the</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       only assets that could participate in any way in</p> <p>3       this transfer were ones that Barclays had held</p> <p>4       in custody at their clearing bank, Bank of New</p> <p>5       York, and potentially any assets at Lehman that</p> <p>6       were unencumbered and were held away from</p> <p>7       JPMorgan.</p> <p>8       <b>Q. So, again, forgive me if I'm thick</b></p> <p>9       <b>here, but is the problem with JPMorgan --</b></p> <p>10       <b>withdrawn.</b></p> <p>11       <b>When you talk about the assets that</b></p> <p>12       <b>Barclays had at Bank of New York, those were</b></p> <p>13       <b>assets within the repo?</b></p> <p>14       A. Yes.</p> <p>15       <b>Q. Within the Barclays repo, yes?</b></p> <p>16       A. Yes.</p> <p>17       <b>Q. Do you know the amount, the value of</b></p> <p>18       <b>the assets that were at Bank of New York within</b></p> <p>19       <b>the Barclays repo?</b></p> <p>20       A. I didn't know that. I didn't know the</p> <p>21       amount or the value of those assets.</p> <p>22       <b>Q. Okay. And again, so we're clear, you</b></p> <p>23       <b>didn't know at the time or you don't remember</b></p> <p>24       <b>now, or both?</b></p> <p>25       A. I didn't know at the time.</p>
Page 76	Page 77
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       <b>Q. Okay. And the problem with JPM</b></p> <p>3       <b>refusing to transfer assets over, is that away</b></p> <p>4       <b>from the repo?</b></p> <p>5       A. Yes.</p> <p>6       <b>Q. Okay. So your suggestion is to focus</b></p> <p>7       <b>on the repo as the body of assets that can be</b></p> <p>8       <b>transferred to Barclays?</b></p> <p>9       A. Right.</p> <p>10       <b>Q. Plus unencumbered, other unencumbered</b></p> <p>11       <b>assets?</b></p> <p>12       A. That were not held or cleared through</p> <p>13       JPMorgan.</p> <p>14       <b>Q. That are away from JPMorgan?</b></p> <p>15       A. Correct.</p> <p>16       <b>Q. Now, did you have an idea then of what</b></p> <p>17       <b>the value of that total package could be?</b></p> <p>18       A. No.</p> <p>19       <b>Q. So you've made --</b></p> <p>20       A. Because I wasn't clear on what</p> <p>21       actually got transferred and what didn't get</p> <p>22       transferred. I knew broadly the size of the Fed</p> <p>23       repo. I didn't know what the disputed amount</p> <p>24       was or the assets.</p> <p>25       <b>Q. I just need to follow up a bit on the</b></p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       <b>disputed amount.</b></p> <p>3       A. Yeah.</p> <p>4       <b>Q. I'm trying to be as clear as I can --</b></p> <p>5       A. Yeah.</p> <p>6       <b>Q. -- as to what's the JPM problem and</b></p> <p>7       <b>how much of that is --</b></p> <p>8       A. Right.</p> <p>9       <b>Q. -- whether that's -- we've established</b></p> <p>10       <b>the JPM problem is away from the repo, right?</b></p> <p>11       A. The JPM problem vis-a-vis Lehman</p> <p>12       Brothers was away from the repo, that is</p> <p>13       correct.</p> <p>14       <b>Q. But vis-a-vis Barclays, it was not</b></p> <p>15       <b>away from the repo?</b></p> <p>16       A. My understanding was there was a</p> <p>17       dispute about Barclays not accepting all the</p> <p>18       collateral out of the Fed, only some of it, and</p> <p>19       that collateral they didn't accept got left</p> <p>20       behind or, by definition, stays at the clearing</p> <p>21       bank, which was JPMorgan. JPMorgan clears for</p> <p>22       the Fed.</p> <p>23       <b>Q. And I think you had an -- a rough idea</b></p> <p>24       <b>of what percentage of that. It was some</b></p> <p>25       <b>percentage. It could have been as much as 20</b></p>



Page 78

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 percent that Barclays would not accept, yes?

3 A. Yes.

4 Q. Did you have a sense of a dollar  
5 amount of what was net of the amount that  
6 Barclays would not accept?

7 A. It was somewhere in the 40s.

8 Q. And when you're talking about the  
9 amount of the repo, are you talking about the  
10 amount that was financed or the total collateral  
11 as pledged? Withdrawn.

12 You told me you're not an expert in  
13 repos --

14 A. Yeah.

15 Q. -- and neither am I, but I understand  
16 there's a haircut.

17 A. Yeah, I think I was talking about the  
18 amount financed, but I'm not -- I'm sketchy on  
19 that.

20 Q. So you make this proposal. McDade  
21 says he thinks you're right. What's the  
22 reaction from Klein, Ricci and Keegan?

23 A. Ricci says -- there was some  
24 discussion, I don't recall the specifics of it,  
25 but Ricci then I recall specifically says, I

Page 80

1 **HIGHLY CONFIDENTIAL - A. KIRK**

2 The problem turned out to be not only  
3 was the data delivered in a not usable fashion  
4 to the heads of the desk, but it was a different  
5 set of securities. So we had to -- it was  
6 determined that the finance staff of Lehman  
7 Brothers needed to work with the finance staff  
8 at Barclays and get a list of everything that  
9 was in their repo line, and then take that off  
10 the systems and try to put it together in a way  
11 that could be delivered to the various trading  
12 desks to try to put some value on it.

13 Q. When you referred before to, you know,  
14 we had started that process, was that a -- were  
15 you referring --

16 A. From the night of the --

17 Q. Yes.

18 A. -- Daniel Flores' e-mail.

19 Q. That's the one that refers to trying  
20 to come up with fire-sale-type prices?

21 A. Yes.

22 Q. What in your mind was the connection  
23 between the, what I'll call the fire sale  
24 analysis and the problem you were dealing with  
25 on Friday? I'm not sure I'm clear on that.

Page 79

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 believe he's right. We have to change course.

3 Q. I know it's a long time ago, but just  
4 given that phrase, is that -- are you quoting  
5 him? Are you summarizing him?

6 A. I'm summarizing him. I was under a  
7 tremendous amount of pressure and stress, so my  
8 memory is a little fuzzy from that.

9 Q. Sure.

10 A. At one point in this meeting, Mike  
11 Klein looked at me and said, "Do you need a  
12 doctor?"

13 Q. Really?

14 A. Yeah.

15 Q. Well, you're kind of a last-minute  
16 volunteer in this thing, you know?

17 A. Yeah. Story of my life.

18 Q. What did Klein say?

19 A. He said, okay, let's get to it.

20 Q. And did Keegan say anything?

21 A. He said, well, we haven't analyzed  
22 this collateral so we don't know what it's  
23 worth. How are we going to figure out what it's  
24 worth? And we said we had started a process  
25 with these large positions.

Page 81

1 **HIGHLY CONFIDENTIAL - A. KIRK**

2 A. Only that we had -- that I could tell  
3 the Barclays guys that we were already trying to  
4 value some collateral and relative to the marks.  
5 The -- Lehman suffered, you know, two issues  
6 that week around valuations. One was the  
7 markets were unbelievably volatile and  
8 incredibly illiquid, and that we were a less  
9 than desirable counterparty for our -- so that  
10 we had been, when we had been liquidating  
11 collateral, we had been losing a lot of money,  
12 and in addition to that, a smaller problem was,  
13 you know, since the firm had filed for  
14 bankruptcy, not every person was showing up to  
15 work.

16 Q. Now, the fire sale liquidation  
17 analysis, the top 100 positions there, did  
18 you -- are you saying that some of those might  
19 have been in the repo?

20 A. Yeah, but we didn't know which ones.

21 Q. You didn't know?

22 A. We had no idea.

23 Q. That's not, so we're clear, the 100  
24 positions we're talking about there is not with  
25 direct reference to what was in the repo?

Page 82	Page 83
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       A. No, not at all. We didn't know we had</p> <p>3       this problem Thursday night.</p> <p>4       <b>Q. What's the tone of the Friday meeting?</b></p> <p>5       <b>I know it's tense and Klein says do you need a</b></p> <p>6       <b>doctor, but are people angry? Are they calm?</b></p> <p>7       <b>Are they -- what's the temperature in this</b></p> <p>8       <b>meeting?</b></p> <p>9       A. Anxious. It's very, very anxious.</p> <p>10      How are we going to be able to try to get</p> <p>11      anything over the goal line by 4 o'clock this</p> <p>12      afternoon, and if we don't, you we don't believe</p> <p>13      we can survive the weekend.</p> <p>14      <b>Q. And why 4 o'clock that afternoon? Was</b></p> <p>15      <b>that the bankruptcy hearing?</b></p> <p>16      A. Yeah, that was the bankruptcy hearing,</p> <p>17      the scheduled bankruptcy hearing.</p> <p>18      <b>Q. Is there any discussion in this</b></p> <p>19      <b>meeting about what, if anything, needs to be</b></p> <p>20      <b>said to the bankruptcy court about this event,</b></p> <p>21      <b>these events?</b></p> <p>22      A. That it would have to be explained.</p> <p>23      This transaction was very different than what</p> <p>24      had been previewed two days before, and it would</p> <p>25      have to be explained why it came up.</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       <b>Q. Who said it would have to be</b></p> <p>3       <b>explained?</b></p> <p>4       A. Barry -- in that meeting -- I</p> <p>5       apologize, some of these meetings are blurs.</p> <p>6       <b>Q. Sure.</b></p> <p>7       A. But at some point during the day,</p> <p>8       Barry Ridings, I was in a meeting with him, I</p> <p>9       believe it was maybe at the tail-end of this</p> <p>10      meeting, he came in and, you know, he listened</p> <p>11      to this explanation again and then he said,</p> <p>12      okay, we're going to have to be able to explain</p> <p>13      this.</p> <p>14      <b>Q. And did the Barclays folks in the</b></p> <p>15      <b>meeting -- and by that, I'm including Klein</b></p> <p>16      <b>here, Klein, Ricci, Keegan -- did they have</b></p> <p>17      <b>anything to say about whether and when this</b></p> <p>18      <b>would have to be explained to the court?</b></p> <p>19      A. No, they were taking Barry's lead.</p> <p>20      <b>Q. Now --</b></p> <p>21      A. We all knew that there was a court</p> <p>22      hearing scheduled at 4 o'clock.</p> <p>23      <b>Q. Why do you describe this as a very</b></p> <p>24      <b>different agreement?</b></p> <p>25      A. The list of assets is different.</p>
Page 84	Page 85
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       <b>Q. Was there any discussion about the</b></p> <p>3       <b>consideration Barclays was to give in the</b></p> <p>4       <b>agreement also changing?</b></p> <p>5       A. Besides the amount, no.</p> <p>6       <b>Q. Well --</b></p> <p>7       A. Meaning besides the fact that it</p> <p>8       wasn't 72 million, you know, the attempt was to</p> <p>9       get it so that the assets and liabilities would</p> <p>10      balance.</p> <p>11      <b>Q. And the 72 million, you're looking at</b></p> <p>12      <b>Exhibit 19, yeah?</b></p> <p>13      A. Yes.</p> <p>14      <b>Q. That financial schedule.</b></p> <p>15      Was there any discussion of the</p> <p>16      compensation and cure components of the assumed</p> <p>17      liabilities changing?</p> <p>18      A. Not at that meeting.</p> <p>19      <b>Q. Did you at some point hear a</b></p> <p>20      <b>discussion about the compensation and cure</b></p> <p>21      <b>components changing?</b></p> <p>22      A. At some point late in the day, there</p> <p>23      was a -- not on the compensation, there was no</p> <p>24      discussion of compensation. Ian -- not Ian,</p> <p>25      Paolo was attempting to figure out a better</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       estimate. I think they had always continually</p> <p>3       worked on it, but they were trying to figure a</p> <p>4       better estimate.</p> <p>5       Ian -- I remember Paolo coming into a</p> <p>6       meeting I was in, I don't remember who it was</p> <p>7       with, but he came in and said I'm working</p> <p>8       through the cure payments to try to see if</p> <p>9       there's some wiggle room there, so to speak, in</p> <p>10      terms of what is that estimate. I never got</p> <p>11      a -- I was -- that was not part of the</p> <p>12      transaction I was concerning myself with. I was</p> <p>13      supposed to try to shepherd along as best as</p> <p>14      possible in this incredible short timeframe some</p> <p>15      valuation work that we could get to on the</p> <p>16      assets.</p> <p>17      <b>Q. Wiggle room up or wiggle room down, or</b></p> <p>18      <b>both?</b></p> <p>19      A. I don't -- he didn't mention it one</p> <p>20      way or another. Some variance I guess is a</p> <p>21      better way to put it. I don't remember whether</p> <p>22      it was higher or lower.</p> <p>23      <b>Q. In the Friday meeting with McDade and</b></p> <p>24      <b>you and Klein and Ricci and Keegan, was there</b></p> <p>25      <b>any discussion about Lehman defaulting on the</b></p>

Page 86

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **repo?**

3 A. No.

4 **Q. Were you ever involved in any**  
5 **discussion concerning the topic of Lehman**  
6 **defaulting on the repo?**

7 A. Not a discussion. I received an  
8 e-mail that referenced it, but --

9 **Q. From whom did you receive the e-mail?**

10 A. I don't have it in front of me.

11 You've got it, Gerry Reilly. That was  
12 a couple days earlier when I wasn't involved, so  
13 I didn't pay attention to it.

14 **Q. Do you recall that as an e-mail where**  
15 **Reilly proposed defaulting on the repo was the**  
16 **best way to deliver the bulk discount to**  
17 **Barclays?**

18 A. I would have to look at it again.

19 **Q. We'll get to that a little later.**

20 A. Fine.

21 **Q. Is there any discussion in the Friday**  
22 **meeting of that, of using the repo as a means of**  
23 **delivering a haircut to Barclays?**

24 A. No.

25 **Q. Was there any discussion in the Friday**

Page 87

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **meeting of terminating the repo?**

3 A. I recall a discussion, I don't  
4 remember who was in the meeting, but with  
5 Barclays that if we couldn't get to closure that  
6 day --

7 **Q. That Friday?**

8 A. That Friday.

9 **Q. Okay.**

10 A. -- it was likely they would terminate  
11 the repo.

12 **Q. Do you know if at any point Barclays**  
13 **did terminate the repo?**

14 A. I don't know the answer to that.

15 **Q. When the Barclays folks said if they**  
16 **couldn't get to closure on Friday, they would**  
17 **have to terminate the repo, was there any**  
18 **reaction from the Lehman folks to that**  
19 **statement?**

20 A. We understood they had to do what was  
21 within their rights and what they felt was  
22 appropriate.

23 **Q. Who said that?**

24 A. McDade.

25 **Q. I'm going to show you, Mr. Kirk,**

Page 88

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **what's previously been marked as Exhibit 21.**  
3 **Take a moment to look through the document.**  
4 **(Document review.)**

5 A. Okay.

6 **Q. Is that the document, the e-mail you**  
7 **referred to a moment ago?**

8 A. Yes.

9 **Q. At the very bottom of the document,**  
10 **paragraph 3, and this is within the e-mail from**  
11 **Reilly to Lowitt, Gelband, Tonucci and Kelly, is**  
12 **the following, "Not clear on the amount of block**  
13 **discount or how we make it happen. Defaulting**  
14 **on repo could be the best, as discount could be**  
15 **taken from haircut." Do you see that?**

16 A. Uh-huh.

17 **Q. You may have said something a moment**  
18 **ago about this, but let me ask you, did you have**  
19 **an understanding when you saw this e-mail of**  
20 **what it was Mr. Reilly was talking about, using**  
21 **the repo?**

22 A. No, this was before I was involved,  
23 and I was CC'd on this e-mail because of my work  
24 in the auction rate book and the prime brokerage  
25 financing at the time.

Page 89

1 **HIGHLY CONFIDENTIAL - A. KIRK**

2 **Q. Okay. So the first paragraph of**  
3 **Mr. Reilly's e-mail refers to the auction rate**  
4 **book?**

5 A. Yeah.

6 **Q. And the question appears to be whether**  
7 **it's staying or going in the transaction, yes?**

8 A. Right.

9 **Q. And was it your understanding that it**  
10 **was that first question that was the reason it**  
11 **was forwarded to you, because you're in the ARS**  
12 **world?**

13 A. I had been in the ARS world in my  
14 previous job, and I assumed it was forwarded to  
15 me so they could figure out who should answer  
16 these questions, who would be most expert to  
17 answer them.

18 **Q. All right. So when you got the whole**  
19 **e-mail, including the other two questions --**

20 A. Yep.

21 **Q. -- am I fairly understanding your**  
22 **testimony that you didn't really focus on 3**  
23 **because it wasn't in your area of**  
24 **responsibility, you didn't understand it to be**  
25 **addressed to you?**

Page 90

1           **HIGHLY CONFIDENTIAL - A. KIRK**  
2       A. As a matter of fact, my answer  
3 indicates what I did was I redirected them to  
4 people I thought could be helpful.  
5       **Q. Okay.**  
6       A. That's what I thought my  
7 responsibility would be.  
8       **Q. Okay.**  
9       A. Try to put point them in a direction.  
10       **Q. Beg your pardon.**  
11       And with respect to the third  
12 question, you say, "The third question is  
13 definitely for Cogs," C-O-G-S. Is that a  
14 reference to Mr. Coghlan?  
15       A. John Coghlan, yes.  
16       **Q. John Coghlan, okay. And why was it a**  
17 **question for John Coghlan?**  
18       A. Because he was head of repo financing  
19 at the firm.  
20       **Q. Do you know if Mr. Coghlan ever did**  
21 **address the third question?**  
22       A. No idea.  
23       **Q. Now, when you were in the Friday**  
24 **meeting and the topic of the repo was being**  
25 **discussed -- withdrawn.**

Page 92

1           **HIGHLY CONFIDENTIAL - A. KIRK**  
2 business anymore.  
3       **Q. Was there a reference to the -- any**  
4 **discussion in the Friday meeting of a discount?**  
5       A. No, not that I recall.  
6       **Q. Okay. So I'll summarize it just to**  
7 **frame my next question so you're not married to**  
8 **how I do this. But as I understand it, the**  
9 **meetings happened, you identified the JPM**  
10 **problem, the recommendation is made to transfer**  
11 **what's in the repo, and there's some issues**  
12 **about how to value what's in there; is that a**  
13 **fair summary?**  
14       A. Yes.  
15       **Q. Okay. And the general sense of the**  
16 **meeting from both sides of the table is, okay,**  
17 **let's go to it and try and figure this out, we**  
18 **have until about 4 o'clock to see if we can**  
19 **solve this, yes?**  
20       A. Yes.  
21       **Q. And Barclays says if we can't reach a**  
22 **resolution of that by about 4 o'clock, we may**  
23 **have to terminate the repo, correct?**  
24       A. Correct.  
25       **Q. And McDade has said if that comes to**

Page 91

1           **HIGHLY CONFIDENTIAL - A. KIRK**  
2       This is sent, this e-mail comes to you  
3 on Thursday?  
4       A. Yes.  
5       **Q. At roughly 6:40 in the morning. Note**  
6 **that that's Greenwich mean time shown there.**  
7       A. Yeah.  
8       **Q. The next morning you're in a meeting**  
9 **where the repo is being discussed. Did that**  
10 **trigger any recollection in your mind about, you**  
11 **know, an e-mail discussion the prior day about**  
12 **using the repo as a means of making the block**  
13 **discount happen?**  
14       A. No, I, you know, I get 500 e-mails a  
15 day, and during this period of time we were  
16 getting probably twice that. So ...  
17       **Q. And when you saw a reference --**  
18       A. I was answering all of them, so, you  
19 know, or as many of them as I could.  
20       **Q. And also to the mysterious number that**  
21 **we finally identified.**  
22       A. Yes, and then there's the mysterious  
23 number.  
24       **Q. Now, the --**  
25       A. I don't think the company's in

Page 93

1           **HIGHLY CONFIDENTIAL - A. KIRK**  
2 be, you know, you have to do what you have to  
3 do?  
4       A. Those are your rights.  
5       **Q. And you don't know if the repo was in**  
6 **fact ever terminated by Barclays?**  
7       A. I don't know that.  
8       **Q. Okay. So now what happens? Does the**  
9 **meeting end or is there further discussion?**  
10       A. I recall the meeting ending at that  
11 time.  
12       **Q. And what did you do next?**  
13       A. I went back to my office. I called  
14 the various senior executives I was going to  
15 meet with and told them that we should be  
16 getting a new schedule at some point of assets  
17 that we would have to -- they should ignore that  
18 schedule of assets and we would be getting a new  
19 schedule of assets at some point to try to put  
20 some values on.  
21       **Q. When you say "ignore that schedule of**  
22 **assets," again, for clarity of record, are you**  
23 **talking about Exhibit 19, the original financial**  
24 **schedule?**  
25       A. I'm sorry, no, I'm talking about the

Page 94

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 list of hundred assets that was delivered to the  
3 desk early that morning.

4 Q. Got it. As part of the fire sale  
5 liquidation?

6 A. Correct.

7 Q. And you told them they would be  
8 getting a new list of assets. Who is it you're  
9 having these communications with?

10 A. I certainly called Mike Gelband and I  
11 would have called some subset, although I don't  
12 recall who I spoke to specifically or who Mike  
13 spoke to, but I would have called either  
14 Kaushik, Charlie, Eric and Gerry.

15 Q. Eric is Eric Felder?

16 A. Yes.

17 Q. And Gerry is Gerald Donini?

18 A. Yes.

19 Q. And who is Charlie? Is that Charlie  
20 Spero?

21 A. Spero, uh-huh.

22 Q. And did do you this on a conference  
23 call? Call them separately? In a meeting?

24 A. Probably called them separately.

25 Q. And what happened after that?

Page 96

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 pinpoint fashion in this timeframe, but we'll  
3 try.

4 Q. And at some point was there -- did  
5 they solve that problem? Did they produce  
6 valuations?

7 A. The only valuations we got was that --  
8 I don't know what they communicated to Barry  
9 Ridings or the people working on that specific  
10 testimony.

11 Q. Uh-huh.

12 A. But I got the word back generally that  
13 many of these positions were so illiquid that,  
14 you know, that if we were to try to sell them,  
15 given our circumstances, you know, the bids  
16 might be down 20 percent.

17 Q. Was there any discussion about looking  
18 at the valuations that Bank of New York had  
19 given to what was in the repo?

20 A. We didn't have access to Bank of New  
21 York's valuations, I don't believe.

22 Q. Did you talk to anyone who was  
23 familiar with how repurchase -- more familiar  
24 than you with how repurchase agreements worked  
25 to see if the collateral agent applied

Page 95

1 HIGHLY CONFIDENTIAL - A. KIRK

2 A. We waited for a deliverable schedule  
3 from finance.

4 Q. Did you get one?

5 A. Got one at sometime within the hour.

6 Q. And from whom within finance did you  
7 receive that?

8 A. I don't remember who it was.

9 Q. Who within finance was in charge of  
10 that piece?

11 A. It would have been some combination --  
12 well, no, most likely it would have been Paolo,  
13 working with accounting.

14 Q. And Paolo or somebody at his direction  
15 delivers a schedule. To whom is it delivered?

16 A. I don't recall, but I'm sure it was  
17 instructed to be delivered directly to the  
18 people on this list that I mentioned before and  
19 myself and Mike.

20 Q. And what happened with the list?

21 A. We asked the senior managers to try to  
22 value the list given the market conditions that  
23 day, and generally the response was the markets  
24 are too volatile, there's too many line items,  
25 it's not possible to get this done in any

Page 97

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 valuations to what was held as collateral?

3 A. I don't recall having that specific  
4 conversation.

5 Q. Do you know if anyone did have that  
6 discussion, that conversation with Barclays?

7 A. They might have.

8 Q. Without regard to the particular  
9 detail or even the number --

10 A. Yeah.

11 Q. -- you had a sense of whether by, you  
12 know, at some point on that Friday a value was  
13 put on the collateral within the repo?

14 A. We at Lehman determined that the  
15 out -- the volatility of those outcomes we  
16 couldn't put a number that was specific on it.  
17 It was, given how illiquid many of the assets  
18 were, some of the assets you could value, but  
19 the markets were tremendously volatile all week.

20 We had had, you know, been getting  
21 closed out of -- just the prior day we got  
22 closed out of a repo, a futures position on the  
23 CME that had excess margin of, you know, \$1.6  
24 billion.

25 As far as we could tell, the markets

Page 98	Page 99
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       hadn't moved that much. Many of them were in</p> <p>3       Treasury and government bond futures, but the</p> <p>4       CME called us to inform us they had closed us</p> <p>5       out of the position and we had lost all the</p> <p>6       money in excess margin. So it was becoming very</p> <p>7       hard to value even what were deemed to be liquid</p> <p>8       securities.</p> <p>9       <b>Q. Just so we're clear here, the closing</b></p> <p>10      <b>out of the position by the Chicago Merc doesn't</b></p> <p>11      <b>bear on the collateral that's within the repo;</b></p> <p>12      <b>that's a separate event, correct?</b></p> <p>13      A. That is a separate event, but it</p> <p>14      was -- it was demonstrative of the volatility</p> <p>15      and the issues we were wrestling with.</p> <p>16      <b>Q. And the question that I would like to</b></p> <p>17      <b>put is, did Lehman come to some number, did it</b></p> <p>18      <b>come to a value, a valuation of the collateral</b></p> <p>19      <b>that was within the Barclays Repurchase</b></p> <p>20      <b>Agreement?</b></p> <p>21      A. We couldn't come up with a specific</p> <p>22      value. We didn't have time. We knew we</p> <p>23      didn't -- we tried, but we couldn't, and we knew</p> <p>24      the risk was that Barclays would close out of</p> <p>25      the repo and take all that collateral, so they</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       owned it, that we would end up with no excess</p> <p>3       from that collateral, and that from the very</p> <p>4       high-level work that the senior risk managers</p> <p>5       did, which we were relying upon, that we could</p> <p>6       be well out of the money, it was likely that we</p> <p>7       could be well -- we would be well out of the</p> <p>8       money in that below the haircut, which I</p> <p>9       believe, understood to be somewhere between 5</p> <p>10      and 10 percent.</p> <p>11      <b>Q. When you referred to a moment ago to</b></p> <p>12      <b>one of the risks was that we would not end up</b></p> <p>13      <b>with -- we would end up with no excess, what did</b></p> <p>14      <b>you mean by that?</b></p> <p>15      A. Meaning that if Barclays closed us out</p> <p>16      of the repo, our experience had been, not just</p> <p>17      in that period of time but other cases, but</p> <p>18      certainly in that week, that their liquidation</p> <p>19      of that collateral would eat through more than</p> <p>20      the haircut they had and that they would not get</p> <p>21      back a hundred cents on the dollar. So we,</p> <p>22      Lehman, would not receive any proceeds back from</p> <p>23      the liquidation of that collateral.</p> <p>24      <b>Q. What was your understanding of what</b></p> <p>25      <b>would happen if there was excess collateral?</b></p>
Page 100	Page 101
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       <b>Who would keep that?</b></p> <p>3       A. If there was excess collateral, Lehman</p> <p>4       would keep that value.</p> <p>5       <b>Q. Was that discussed at the Friday</b></p> <p>6       <b>meeting, that if there was excess collateral, it</b></p> <p>7       <b>would say with Lehman?</b></p> <p>8       A. There was not a discussion of closing</p> <p>9       out the repo and the mechanics of it.</p> <p>10      <b>Q. So did there come a point on Friday</b></p> <p>11      <b>where Lehman communicated to Barclays either --</b></p> <p>12      <b>where it communicated a value of the repo or it</b></p> <p>13      <b>said it couldn't? What happens next vis-a-vis</b></p> <p>14      <b>talking to Barclays.</b></p> <p>15      A. In terms of talking to Barclays, the</p> <p>16      next meeting was at some point, call it 3</p> <p>17      o'clock in the afternoon, and they were</p> <p>18      indicating that the -- their view of the value</p> <p>19      of the repo securities was far below the stated</p> <p>20      value and below their loan value and that Lehman</p> <p>21      should attempt to find other unencumbered</p> <p>22      assets, should continue to attempt to find other</p> <p>23      unencumbered assets or the transaction may not</p> <p>24      take place.</p> <p>25      <b>Q. Now, is this response from Barclays</b></p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       <b>after the Friday meeting has ended? I want to</b></p> <p>3       <b>get a sense of the timeline within Friday of</b></p> <p>4       <b>when Barclays does this.</b></p> <p>5       A. This is like 3 o'clock in the</p> <p>6       afternoon.</p> <p>7       <b>Q. Does Barclays tell you, does Barclays</b></p> <p>8       <b>tell Lehman how much difference has to be made</b></p> <p>9       <b>up?</b></p> <p>10      A. No.</p> <p>11      <b>Q. Is your answer that you don't remember</b></p> <p>12      <b>or that you remember that they didn't?</b></p> <p>13      A. I remember they didn't.</p> <p>14      <b>Q. So what happens now?</b></p> <p>15      A. We said we'll continue to look. And</p> <p>16      Ian and I had a conversation with McDade</p> <p>17      offline, just he and I. I said, I don't have</p> <p>18      any basis or enough information to argue with</p> <p>19      them about their point of view, about the value</p> <p>20      of collateral, and that the high-level work</p> <p>21      we've been doing leads me to believe that they</p> <p>22      have a reason to be nervous about this.</p> <p>23      <b>Q. And what was --</b></p> <p>24      <b>(Mr. Kelley confers with the witness.)</b></p> <p>25      A. Barclays.</p>

Page 102	Page 103
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b> 2       I'm sorry. Who is "they," he asked 3       me. Barclays has a reason to be nervous. 4       <b>Q. And did McDade give any instructions</b> 5       <b>or suggestions about what to do next?</b> 6       A. He said, well, make sure Ian is 7       working on any possible unencumbered assets. 8       <b>Q. So did McDade give a target of any</b> 9       <b>kind of how much in unencumbered assets needed</b> 10       <b>to be found?</b> 11       A. At that point, all we could do was 12       figure out what was there, and specifically I 13       don't recall, but I do -- I do recall that the 14       shortfall was described as, you know, billions 15       of dollars. 16       <b>Q. And by "the shortfall," you're</b> 17       <b>referring to what?</b> 18       A. The value that Barclays thought those 19       repo assets were worth versus their stated 20       value. 21       <b>Q. That's the shortfall between what</b> 22       <b>Barclays thought they were actually worth and</b> 23       <b>the amount of the repo?</b> 24       A. Yeah. 25       <b>Q. So your recollection is that the</b></p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b> 2       <b>shortfall was in the billions of dollars?</b> 3       A. Yes. 4       <b>Q. But do you have a recollection of</b> 5       <b>whether it was between 2 billion and a gazillion</b> 6       <b>billion? Is there some range you were thinking</b> 7       <b>of at the time?</b> 8       A. Somewhere between 2 and 5. 9       <b>Q. And I'm trying to get a sense here,</b> 10       <b>that's why I keep pushing at the number --</b> 11       A. Yeah. 12       <b>Q. -- I'm trying to get a sense here of</b> 13       <b>what the project is. Is it go find every</b> 14       <b>unencumbered asset we have on the one end of the</b> 15       <b>possibilities, or we have to make up this</b> 16       <b>specific shortfall, go find that amount at the</b> 17       <b>other?</b> 18       A. I didn't have the conversation. Bart 19       had the conversation with Ian, so I didn't have 20       that conversation specifically with him. 21       <b>Q. So you don't know one way or the other</b> 22       <b>whether Mr. McDade gave a target of some kind to</b> 23       <b>Mr. Lowitt?</b> 24       A. No, I don't know that. 25       <b>Q. Your understanding from your view of</b></p>
Page 104	Page 105
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b> 2       <b>things was there was a shortfall?</b> 3       A. Yes. 4       <b>Q. It wasn't Barclays was saying it</b> 5       <b>wouldn't be made up out of the repo bucket?</b> 6       A. Yeah. 7       <b>Q. Therefore, other assets, unencumbered</b> 8       <b>assets, capable of delivery had to be found?</b> 9       A. Right. 10       <b>Q. It was in the billions, but for</b> 11       <b>your -- for the purposes of what you were doing,</b> 12       <b>you didn't really need to know the number, you</b> 13       <b>just needed to know the problem had --</b> 14       A. Right, I was not the one who was going 15       to solve those specific issues, so that was 16       someone else's job. 17       <b>Q. Was anyone other than Lowitt involved</b> 18       <b>in the particulars of solving the problem?</b> 19       A. I don't know the answer to that. 20       <b>Q. Did you ever learn whether Lowitt</b> 21       <b>enlisted others in the task of finding</b> 22       <b>unencumbered assets?</b> 23       A. No, I didn't, I didn't find out. 24       <b>Q. Did there come a time when you learned</b> 25       <b>whether additional value, additional</b></p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b> 2       <b>unencumbered assets were located that could be</b> 3       <b>transferred to Barclays?</b> 4       A. Sometime late in the afternoon between 5       3 and 4, Ian came into a meeting where I was 6       about to start a phone call with Bart, the Weil 7       Gotshal lawyers on the phone, and I was sitting 8       in the room with Mark Shapiro and I think it was 9       Jim Seery and the Barclays, again, Diamond, 10       Ricci, Klein and Keegan, and Ian came in and he 11       said there's a -- there's a schedule of assets 12       that we have that are unencumbered. I believe 13       the number was \$1.9 billion of marked value. 14       In addition, he said there might be 15       value in our 15c3 margin, which at the time I 16       remember that specifically because I was like, 17       "Gee, what's that? I've never heard of that." 18       So he said there might be value there, I don't 19       know yet, and there might be others. 20       So we said to Ian, well, get us a 21       schedule of what's in the 1.9 billion in the -- 22       I think he referred to it as being in the box 23       unencumbered of these unencumbered assets, i.e., 24       they were being financed by Lehman's unsecured 25       debt, I believe at the time, or equity, and he</p>

Page 106	Page 107
<p>1           <b>HIGHLY CONFIDENTIAL - A. KIRK</b> 2 came back with that list, showed it to myself 3 and to Keegan and some others. 4           Keegan looked at it and said, you 5 know, this is the -- these assets are even 6 harder to value than what we already have. I 7 don't even know what these are. I specifically 8 remember there being residential mortgage 9 residual interests and things like IOs and some 10 very illiquid aged positions in high-yield and 11 distressed debt. I don't specifically recall 12 what else it was, but I do recall the list was 13 a -- there was a reason why there was nobody 14 financing those assets and it was because they 15 were the most illiquid and hardest to value 16 securities that Lehman Brothers owned on its 17 balance sheet. 18       <b>Q. So when Keegan said these are even</b> 19 <b>harder to value than --</b> 20       A. Yeah. 21       <b>Q. -- than the other stuff, was he</b> 22 <b>comparing this new schedule with the</b> 23 <b>hard-to-value stuff in the repo?</b> 24       A. Yes. 25       <b>Q. And apart from saying it was hard to</b></p>	<p>1           <b>HIGHLY CONFIDENTIAL - A. KIRK</b> 2 <b>value, did Keegan have anything to say about</b> 3 <b>that?</b> 4       A. He said I don't know how I'm going to 5 put a value on this of any positive number. 6       <b>Q. Describe for me as best you can the</b> 7 <b>conversation about that topic and who said what.</b> 8       A. Ian came in. He delivered this -- he 9 said -- we started the conversation with Ian 10 delivering the list of assets, and he handed it 11 to Keegan -- he handed out probably five copies. 12 Most people were just staring at it saying 13 nothing. 14       Mike looked at it and said, you know, 15 I -- what's this asset? What's that asset? I 16 think Ian may have answered specifically if he 17 knew what the nature of those assets were, 18 because in like residential mortgages you have 19 names for deals that unless you knew that that 20 was a residential mortgage deal, you wouldn't 21 know what it was, you know, Sasco or things of 22 that nature. 23       And Ian had some familiarity with 24 the -- with what the assets were because he had 25 been responsible for financing those sorts of</p>
Page 108	Page 109
<p>1           <b>HIGHLY CONFIDENTIAL - A. KIRK</b> 2 assets or, in this case, having the equity 3 finance the assets. And so there was some back 4 and forth around that, and Keegan made the 5 conclusion that he was not going to warrant any 6 positive value on these assets from his seat, 7 and he made that -- he sort of said that to Rich 8 Ricci and Bob Diamond: "I can't value these. I 9 would be very nervous about putting a positive 10 value on them." 11       <b>Q. So, just to kind of cut to the end of</b> 12 <b>the sequence here, does Barclays agree to take</b> 13 <b>these additional buckets of value, you know, the</b> 14 <b>15c3 and the assets, the unencumbered assets in</b> 15 <b>the box?</b> 16       A. Yes. 17       <b>Q. And when they make that agreement, are</b> 18 <b>you present? Was that at this meeting?</b> 19       A. Yes. 20       <b>Q. And tell me what was said in that</b> 21 <b>regard.</b> 22       A. That, all right, we don't know what 23 they're worth. They might be worth something, 24 so we want them. And Bart was on the phone, he 25 agreed -- he agreed to that, and I think that</p>	<p>1           <b>HIGHLY CONFIDENTIAL - A. KIRK</b> 2 was the sum and the substance as to what was 3 said about those assets. 4       <b>Q. Was any number put on now the total</b> 5 <b>value of the deal, combining the assets that</b> 6 <b>were in the repo plus the 15c3 and the</b> 7 <b>unencumbered assets in the box?</b> 8       A. I don't recall a specific number being 9 put on the -- on the deal. 10       <b>Q. Whether you recall today what the</b> 11 <b>number was, I'm going to press on this a little</b> 12 <b>bit, do you recall if a number was put out</b> 13 <b>there?</b> 14       A. I'm sorry, I don't recall what -- 15 whether -- I don't recall whether there was a 16 number specifically put out there. 17       <b>Q. Okay. And did you have a sense after</b> 18 <b>this conversation, Mr. Lowitt reports on the</b> 19 <b>15c3 assets and the unencumbered assets and</b> 20 <b>Keegan says, I can't value those and then the</b> 21 <b>agreement's made, well, we'll take them because</b> 22 <b>there may be some value, whether after that</b> 23 <b>point there were additional searches for value?</b> 24 <b>Do you know one way or the other?</b> 25       A. I don't recall one way or another. I</p>



Page 110	Page 111
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       don't recall what the whole -- I recall 15c3. I</p> <p>3       recall this 1.9 billion because I was sitting</p> <p>4       there with the list and I said, "Gee, what is</p> <p>5       15c3?" So I recall those two. I don't recall</p> <p>6       if there were other categories discussed during</p> <p>7       that meeting.</p> <p>8       <b>Q. You said a moment ago that Lowitt,</b></p> <p>9       <b>when he reported on the 15c3 piece, he put that</b></p> <p>10      <b>at about 1.9 billion?</b></p> <p>11      A. That was the marked value.</p> <p>12      <b>Q. Of marked value. And that there was</b></p> <p>13      <b>some value, but -- of what was in the box, but</b></p> <p>14      <b>he didn't know what it was?</b></p> <p>15      A. It was some value in 15c3, but he</p> <p>16      didn't know how much there would be.</p> <p>17      <b>Q. So when that meeting ended, did you</b></p> <p>18      <b>have, whether you remember the number or not</b></p> <p>19      <b>today, did you have a sense of what the total</b></p> <p>20      <b>additional value was between the 15c3 and the</b></p> <p>21      <b>contents of the box?</b></p> <p>22      A. No.</p> <p>23      <b>Q. Was there any plan made to calculate</b></p> <p>24      <b>that number?</b></p> <p>25      A. I think Ian was putting together a</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       schedule that he would communicate to Bart</p> <p>3       with -- there was a, first of all, in that</p> <p>4       discussion there was a wrap-up of this is what</p> <p>5       the deal looks like. It's got the 45 billion,</p> <p>6       it's got the, on the asset side, it's got this</p> <p>7       1.9, it's got 15c3, it may have had, you know,</p> <p>8       other components to it.</p> <p>9       Bart agreed, Ian and Bart agreed that</p> <p>10      these were the components on the assets side.</p> <p>11      It had the assumed liabilities. They agreed</p> <p>12      that those were the assumed liabilities that</p> <p>13      were going to agree, I don't remember the exact</p> <p>14      numbers, and they said, okay, do we have an</p> <p>15      agreement? Barclays said yes. Ian was going to</p> <p>16      go codify that, I believe, and talk to Bart.</p> <p>17      Bart was in a car with Weil lawyers on</p> <p>18      his way to bankruptcy court. That's why he</p> <p>19      wasn't in the room.</p> <p>20      <b>Q. When you say Ian was going to go away</b></p> <p>21      <b>and codify that, you mean put the schedules</b></p> <p>22      <b>together?</b></p> <p>23      A. I think so, yes, that's what I mean.</p> <p>24      <b>Q. Did Mr. Klein say anything about this</b></p> <p>25      <b>process adding additional value for Barclays?</b></p>
Page 112	Page 113
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       A. No, not adding additional value. He</p> <p>3       didn't comment on that.</p> <p>4       <b>Q. Did Klein make any recommendation in</b></p> <p>5       <b>your hearing as to whether Barclays should or</b></p> <p>6       <b>should not accept this deal?</b></p> <p>7       A. Klein recommended that they accept the</p> <p>8       deal if -- when they got the additional, all the</p> <p>9       additional collateral.</p> <p>10      <b>Q. I don't mean this to be sarcastic. I</b></p> <p>11      <b>just can't come up with another way of phrasing</b></p> <p>12      <b>it.</b></p> <p>13      We're looking around for all this</p> <p>14      additional value and your memory is not clear on</p> <p>15      whether there was a target or not?</p> <p>16      A. Yeah.</p> <p>17      <b>Q. Framed that way, what was the project</b></p> <p>18      <b>here? Was it to go find everything else and</b></p> <p>19      <b>turn it over, or was it to find some, some</b></p> <p>20      <b>identifiable bucket of value until Barclays</b></p> <p>21      <b>said, yeah, that's enough? Do you see the</b></p> <p>22      <b>distinction I'm making?</b></p> <p>23      A. Yes, it's -- the project was the</p> <p>24      second, not the first.</p> <p>25      <b>Q. Okay. So the idea was there would be</b></p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       some value left in Lehman; it was just a</p> <p>3       question of finding enough additional value to</p> <p>4       make Barclays still close?</p> <p>5       A. Yeah. And that project was Ian's</p> <p>6       project, not mine. I wasn't -- I was an</p> <p>7       observer to this part of the process.</p> <p>8       <b>Q. What was Ian's manner in this meeting?</b></p> <p>9       <b>I mean, it's a tough week for everybody, but</b></p> <p>10      <b>what's his demeanor?</b></p> <p>11      A. He hadn't slept in a week, so he was a</p> <p>12      little harried.</p> <p>13      <b>Q. Did Ian identify other potential</b></p> <p>14      <b>sources of additional value that he had looked</b></p> <p>15      <b>at apart from the box and 15c3?</b></p> <p>16      A. He --</p> <p>17      MR. HUME: Objection. Asked and</p> <p>18      answered.</p> <p>19      <b>Q. You can answer.</b></p> <p>20      A. No, he, as I said, he may have, but I</p> <p>21      didn't -- I don't remember.</p> <p>22      <b>Q. You don't remember, then, any</b></p> <p>23      <b>particular other sources that he might have</b></p> <p>24      <b>discussed?</b></p> <p>25      A. No, I don't.</p>

Page 114

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       (Discussion off the record.)  
3       BY MR. GAFFEY:  
4       **Q. While we're pulling a couple of**  
5       **documents out, Mr. Kirk, let me see if I can get**  
6       **the rest of, you know, the blocks of your day.**  
7       **This meeting ends. Lowitt is given**  
8       **the task of codifying -- your word -- you know,**  
9       **getting a list together?**  
10      A. Yes.  
11      **Q. What do you do next?**  
12      A. I just go back to my office. Sit  
13      there silently, stunned.  
14      **Q. Maybe try to get some sleep?**  
15      A. Yeah.  
16      **Q. Do you have any role or involvement in**  
17      **this asset collection process we've been talking**  
18      **about after this point?**  
19      A. No.  
20      **Q. Did you go to the hearing?**  
21      A. No.  
22      **Q. Did anyone render reports to you from**  
23      **the hearing --**  
24      A. Yes.  
25      **Q. -- as to what was going on?**

Page 116

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       A. And then somebody called me when it  
3       was done.  
4       **Q. Somebody called to say the judge has**  
5       **approved the deal?**  
6       A. Yeah.  
7       **Q. Did you get reports from anyone that**  
8       **told you whether or not anyone had told the**  
9       **judge that this was a new transaction, different**  
10      **transaction?**  
11      A. I didn't get presented -- one early  
12      conversation I had with JF, I didn't talk to  
13      anybody directly by phone, and I just got a few  
14      cursory e-mails.  
15      **Q. And --**  
16      A. But at one point there was, you know,  
17      my understanding was there was -- and early,  
18      there was discussions before they went, you  
19      know, to court to wrap it up with various  
20      constituents. And certainly there were  
21      constituents there, Bart, Michael Klein and  
22      others, that had the details.  
23      **Q. Now, did you stay in your office until**  
24      **you heard about the --**  
25      A. No. No. I went home and I went to

Page 115

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       **Okay. Who did that?**  
3       A. I got a couple e-mails from Jim Seery  
4       and I had a conversation with Jean-Francois  
5       Astier.  
6       **Q. And what were the, in sum and**  
7       **substance, what were you hearing in the reports**  
8       **from -- we don't have to go through this chapter**  
9       **and verse, but what were the nature of the**  
10      **reports you were getting back from the --**  
11      A. There was, first of all, they were --  
12      JF and Jim were trying to understand what the  
13      new deal was, so I had a conversation with JF  
14      trying to explain to him what I knew, and  
15      because they were, I believe, going to  
16      participate in a meeting with the creditors  
17      explaining this, what the deal was.  
18      And then I got -- so there was some  
19      back and forth to just try to reach me on that  
20      front, and then there was -- they sent me a  
21      couple updates of, you know, Bart's proffers  
22      being read and there's cross-examination, and  
23      then ultimately the deal was done with some  
24      quotes from Judge Peck later that night.  
25      **Q. Did anyone --**

Page 117

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       bed sometime late that evening.  
3       **Q. Sometime after you heard that the deal**  
4       **had been approved?**  
5       A. No. No. I went to bed before that.  
6       Somebody woke me up out of bed.  
7       **Q. Did you continue to do any work or did**  
8       **you perform any tasks in connection with the**  
9       **transaction --**  
10      A. No.  
11      **Q. -- over the weekend?**  
12      A. Saturday I had no involvement. On  
13      Sunday, Bart asked me to come in and try to  
14      participate in the closing of the transaction at  
15      Weil Gotshal.  
16      **Q. Did you do that?**  
17      A. Yes.  
18      **Q. Just so I can plan a little hit for**  
19      **what I want to ask you after lunch break, give**  
20      **me an outline of what you did on the Sunday.**  
21      A. So we went over to Weil. We, Bart and  
22      I, were put in a room. You know, we were there  
23      as a resource as people were trying to put  
24      schedules together, et cetera.  
25      An issue came up early in the morning

Page 118

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2 around the settlement of trades on Monday and  
3 how they were going to be handled, Lehman  
4 trades, customer trades with Lehman. We tried  
5 to help work that issue out, and then we  
6 effectively became observers of this dispute  
7 between JPMorgan and Barclays, as there were  
8 many meetings held into the evening that  
9 JPMorgan came to Weil about 6 o'clock Sunday  
10 night and at the urging of the Federal Reserve  
11 and they walked through, described in very large  
12 group meetings the issues they had.  
13       We sort of hung around and eventually  
14 were told that Barclays and JPMorgan had  
15 resolved their dispute and that the deal could  
16 go to closure.  
17       **Q. When you say "we," are you talking**  
18 **about yourself and Mr. McDade?**  
19       A. And there were others at Lehman as  
20 well.  
21       **Q. Who else?**  
22       A. Jim Seery was there. I called him  
23 late in the afternoon. Ian Lowitt was there.  
24 Paolo was there. A guy name Alastair Blackwell  
25 was there. Steve Berkenfeld was there. That's

Page 120

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       A. Oh, I'm sure there was lots of  
3 documentation, but I'm not a lawyer so I wasn't  
4 reviewing it.  
5       **Q. Do you know, apart from whether you**  
6 **read it or reviewed it, my question is do you**  
7 **know if a new -- a new contract or an amendment**  
8 **or anything else was written up that would**  
9 **reflect the fact that the deal had changed on**  
10 **Friday?**  
11       A. I assume so. I don't -- I never saw  
12 actual evidence of it, but ...  
13       **Q. I've asked you a couple of times when**  
14 **you said you've assumed. What's the basis of**  
15 **the assumption? The fact that it --**  
16       A. That you couldn't proceed with a  
17 commercial transaction without it.  
18       **Q. Do you have any factual basis to think**  
19 **that it was? Did you talk to anybody about it?**  
20 **Did you see any documents?**  
21       A. I didn't see any documents. Certainly  
22 we were advised by Weil that the documents were  
23 in good order.  
24       (Exhibit 316, an e-mail chain with  
25 attached balance sheet, marked for

Page 119

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2 everybody I recall.  
3       **Q. Did you learn how the dispute between**  
4 **JPM and Barclays had been resolved, what the**  
5 **terms of that resolution were?**  
6       A. They didn't tell us.  
7       **Q. So did anybody ask, anybody say how**  
8 **did this issue get resolved?**  
9       A. Yeah, and they said it's between us  
10 and -- Barclays representatives told us -- well,  
11 I don't remember if it was the lawyer or who  
12 specifically, but a representative from Barclays  
13 said that's between Barclays and JPMorgan.  
14       **Q. So the closing did not take place on**  
15 **the Sunday, correct?**  
16       A. It eventually I think closed Monday  
17 morning, but it was one continuous -- I left at  
18 2 A.M., and then they worked towards closing at  
19 some point in the morning prior to the markets  
20 opening.  
21       **Q. Did you go back for the closing?**  
22       A. No.  
23       **Q. Do you know if any additional**  
24 **documentation was done to reflect the new**  
25 **agreement that had been reached on Friday?**

Page 121

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2 identification, as of this date.)  
3       **Q. I have put before you, Mr. Kirk, a**  
4 **three-page document. I'll ask you to take a**  
5 **look through it sufficiently to tell me whether**  
6 **you've seen it before.**  
7       A. Yes, I've seen it.  
8       **Q. Did you see it at or around the time**  
9 **that it's -- of September 19 at 6:16 A.M.?**  
10 **That's the date at the top.**  
11       A. Yes.  
12       **Q. And was this sent to you -- was it**  
13 **your understanding this was sent to you to**  
14 **prepare for that Friday meeting we've been**  
15 **talking about?**  
16       A. It was one, one of the documents that  
17 I assumed we would review.  
18       **Q. Okay. And do you recall --**  
19       MR. HUME: Are you marking it as an  
20 exhibit?  
21       MR. GAFFEY: Yes, I did, Hamish. It's  
22 316.  
23       MR. HUME: I'm sorry.  
24       **Q. Do you recall reviewing it at the**  
25 **Friday meeting?**

Page 122	Page 123
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       A. No, I actually don't recall reviewing</p> <p>3       this.</p> <p>4       Q. Let me just direct your attention,</p> <p>5       sir, to the third page -- well, to the second</p> <p>6       page. You'll see that that's a balance sheet</p> <p>7       that's attached to the e-mail and then referred</p> <p>8       to in the second e-mail.</p> <p>9       A. Yes.</p> <p>10      Q. Do you know who prepared this balance</p> <p>11      sheet?</p> <p>12      A. I don't know specifically who prepared</p> <p>13      it, but it would have been prepared by</p> <p>14      accounting.</p> <p>15      Q. Okay. And --</p> <p>16      A. Well, the e-mail seems to indicate</p> <p>17      Martin -- somebody who worked for Martin Kelly</p> <p>18      had prepared it.</p> <p>19      Q. And within the balance sheet, sir, the</p> <p>20      fifth column that's entitled Transaction</p> <p>21      Adjustments, do you see that?</p> <p>22      A. Yes.</p> <p>23      Q. Do you know what that column</p> <p>24      represents, what the entries in that column are</p> <p>25      meant to represent?</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       A. Only from reading it.</p> <p>3       Q. I don't want you just to guess from</p> <p>4       the face of the document.</p> <p>5       A. No.</p> <p>6       Q. Do you recall any discussion of</p> <p>7       transaction adjustments?</p> <p>8       A. No.</p> <p>9       Q. And in particular, if you could take a</p> <p>10      look at the last page of the document, I would</p> <p>11      ask you to take a look at the Transaction</p> <p>12      Adjustments column where it says 2 billion and</p> <p>13      1.645 billion, are you with me?</p> <p>14      A. Uh-huh.</p> <p>15      Q. And you'll see that those relate to,</p> <p>16      if you read across to the left, items Bonus</p> <p>17      Payable and Cure Payments?</p> <p>18      A. Uh-huh.</p> <p>19      Q. And if you read across with me on the</p> <p>20      Cure Payments line, you'll see, as of 8/31/08,</p> <p>21      the number 701 is there, you with me?</p> <p>22      A. Uh-huh.</p> <p>23      Q. And then as of 9/17/08, 605?</p> <p>24      A. Uh-huh.</p> <p>25      Q. And then there's a transaction</p>
Page 124	Page 125
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       adjustment of 1,645,000,000?</p> <p>3       A. Uh-huh.</p> <p>4       Q. Resulting in a balance sheet transfer</p> <p>5       total of 2.25 billion, do you see that?</p> <p>6       A. Uh-huh. Uh-huh.</p> <p>7       Q. 2.25 is the amount that you recall</p> <p>8       Mr. Tonucci telling you was the assumed</p> <p>9       liability for cure that was Barclays'</p> <p>10      consideration in the deal?</p> <p>11      A. Yes.</p> <p>12      Q. Do you have any knowledge or have you</p> <p>13      been involved in any discussion where a</p> <p>14      transaction adjustment of 1.645 billion was made</p> <p>15      against Lehman's books? Do you know if that</p> <p>16      number was written up?</p> <p>17      A. If it was written up, meaning?</p> <p>18      Q. Do you know if the amount for cure</p> <p>19      payments shown on Lehman's books was written up</p> <p>20      by 1.645 billion?</p> <p>21      A. Oh, I have no idea.</p> <p>22      Q. Did you ever have a discussion with</p> <p>23      Mr. Tonucci or Mr. Kelly or Mr. Lowitt about</p> <p>24      that topic?</p> <p>25      A. No.</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       Q. And I'll ask you the same question,</p> <p>3       sir, with respect to the line for bonus payable.</p> <p>4       Do you see a transaction adjustment of 2</p> <p>5       billion, and the 2 billion is contained in the</p> <p>6       Balance Sheet Transferred column?</p> <p>7       A. Yes.</p> <p>8       Q. Any conversations with Lowitt, Kelly</p> <p>9       or Tonucci about that topic?</p> <p>10      A. No, no conversations.</p> <p>11      Q. Any conversations with anyone else</p> <p>12      about that topic?</p> <p>13      A. No.</p> <p>14      Q. Was that topic addressed at the Friday</p> <p>15      meeting we've been talking about, to your</p> <p>16      recollection?</p> <p>17      A. Only to the extent that there was a</p> <p>18      liability that was 2 billion and 2 and a quarter</p> <p>19      billion that's reflected in this balance sheet</p> <p>20      that had been agreed to prior.</p> <p>21      Q. Do you know if those liabilities of 2</p> <p>22      billion and 2 and a quarter billion were based</p> <p>23      on Lehman's accruals on its books, or were they</p> <p>24      agreed numbers?</p> <p>25      A. I don't know.</p>

Page 126

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       Q. Mr. Kirk, I'm showing you what was  
3 previously marked as Exhibit 8 at a prior  
4 deposition. Take a look through it, sir,  
5 sufficiently to tell me whether you've seen it  
6 before.  
7       A. Yes.  
8       Q. Okay. And what is the document, sir?  
9       A. This is a list of assets that Lehman  
10 Brothers owned.  
11       Q. Was this document -- and again, just  
12 for clarity, there's a time on the cover e-mail  
13 of Mr. Reilly's e-mail to you of 10:51 A.M.,  
14 GMT, which would put it at 6:51 New York time,  
15 okay?  
16       Do you recall receiving this in the  
17 early morning of Friday?  
18       A. Yes.  
19       Q. Is this one of the schedules that  
20 was -- was this schedule sent to you for use at  
21 the Friday meeting?  
22       A. Yes.  
23       Q. Okay. And what was its purpose? What  
24 is this supposed to tell you that's of use to  
25 you at the Friday meeting?

Page 128

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       A. I don't recall this being discussed  
3 because we quickly got to, as I described  
4 before, that whatever schedules had been  
5 produced earlier in that week were no longer  
6 operative.  
7       Q. Do you know if the schedule that's  
8 attached to Exhibit 8 bears any relation to the  
9 schedule that was summarized in Exhibit 19, that  
10 is, that --  
11       A. I don't remember. I can't tell.  
12       Q. Okay. Just back on that page,  
13 Mr. Kirk, do you know what the column Excluded  
14 is for? Do you know what it means?  
15       A. No, I don't know what that means.  
16       Q. I take it, then, you wouldn't be able  
17 to tell me what "Available for Transfer" means  
18 either?  
19       A. No, I don't remember what that is.  
20       Q. Do you recall anyone discussing this?  
21 Whether you recall the contents of the  
22 discussion, do you recall anybody discussing  
23 this at the meeting?  
24       A. I don't recall discussing this  
25 particular sheet.

Page 127

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       A. I don't recall specifically what this  
3 was used to describe to me, except that it was  
4 a -- this I assume is a, just a comprehensive  
5 list of the assets that were going -- were  
6 planned to be transferred to Barclays.  
7       Q. Now, if you would take look, Mr. Kirk,  
8 at the third page of the document. It's a --  
9       MR. KELLEY: Sorry, Bob, you said the  
10 third page?  
11       MR. GAFFEY: Yes, the third page.  
12       A. The Woodburn?  
13       Q. No, just before that.  
14       A. That's my second page.  
15       Q. My fault. The second page of the  
16 document. What do you understand that to be,  
17 sir?  
18       A. I don't recall what this was  
19 particularly. I can read it for the face of it,  
20 but ...  
21       Q. Well, if you could read it with the  
22 Friday meeting in mind and tell me if it  
23 refreshes your recollection as to what role this  
24 summary would have played in your activities at  
25 that meeting, that would be helpful.

Page 129

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       MR. GAFFEY: Why don't we take a lunch  
3 break now.  
4       (Luncheon Recess; Time Noted: 12:29  
5 P.M.)  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Page 130	Page 131
<p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 AFTERNOON SESSION 3 (Time Noted: 1:16 P.M.) 4 ALEX KIRK, resumed and 5 testified further as follows: 6 EXAMINATION BY (Cont'd.) 7 MR. GAFFEY: 8 Q. We talked a little bit this morning, 9 Mr. Kirk, about Mr. Shafir leaving on Thursday? 10 A. Yes. 11 Q. Did he just leave? I mean, was it 12 sudden? 13 A. I just got a call after the fact. I 14 don't know what the back and forth was. 15 Q. Did Mr. McDade or did anyone say to 16 you anything to the effect of this would be a 17 problem for Lehman in the deal since Shafir had 18 played a major role in the negotiations, in sum 19 or substance? Did you pick up that sense from 20 anybody? 21 MR. HUME: Objection to the form of 22 the question. 23 A. I don't remember if he described it as 24 a problem, but certainly, you know, there was 25 lots to do that needed to be done.</p>	<p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Q. Uh-huh. 3 A. It was not viewed as a happy 4 circumstance. 5 Q. Sure. Were there parts, to your 6 knowledge, were there parts of the deal, of the 7 negotiations in which Shafir would be the only 8 source of knowledge? 9 A. I don't know the answer to that. I 10 wasn't around the negotiations at all earlier in 11 the week, so I don't know who did what. 12 Q. Okay. From your time around there 13 during the week, I mean, I understand your 14 involvement in the deal becomes more intense, as 15 it were, on the Friday, but do you pick up any 16 idea during the week of how involved McDade is 17 in the negotiations? 18 A. I think he was very involved. 19 Q. Is he negotiating particular issues or 20 the deal as a whole? 21 A. Again, I don't have any specifics. 22 They were, all these -- my understanding all 23 these negotiations were taking place on the 32nd 24 floor, which I never went up to the 32nd floor 25 during that period of time except maybe to find</p>
Page 132	Page 133
<p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 somebody, so ... 3 Q. In the initial conversations with Bart 4 McDade on the Thursday night and with Lehman 5 folks on the Friday morning, does anyone comment 6 on the departure of Shafir and its impact on the 7 deal? 8 MR. HUME: Objection. Asked and 9 answered. 10 MR. KELLEY: Objection as to form. 11 A. Can I answer that question? 12 Q. Yes, I think you can. 13 A. No, with the exception of it's 14 unfortunate that he's left at this moment in 15 time. 16 (Exhibit 317, a document bearing Bates 17 Nos. 10310050, marked for identification, as 18 of this date.) 19 Q. Mr. Kirk, I'll ask you just take a 20 look through that document sufficiently to tell 21 me whether you can remember seeing it before? 22 A. Yes. 23 Q. Did you see it at or around the time 24 that it's dated, September 19? 25 A. Yes.</p>	<p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Q. Reading up the e-mail chain from 3 bottom to top, you appear to get added in in the 4 message from Paul Houston to O'Meara, Tonucci, 5 Kirk, Walsh, dated 18th September at 23:12, do 6 you see that? 7 A. Uh-huh. 8 MR. KELLEY: I think you meant 9 Houston. 10 Q. I beg your pardon. I do mean Houston, 11 yes. 12 A. Yes. 13 Q. Do you have an understanding of why 14 you are added into this e-mail conversation at 15 this point? What's the issue? 16 A. The issue appears to be, or I recall 17 it to be the racers trust was a piece of 18 collateral that Barclays had received in the 19 repo. Inside the racers trust -- by the way, 20 there are many racers trusts, so I think racers 21 trust was something that indicated a whole 22 series of financing trusts. It wasn't one 23 particular financing trust. 24 But in one of them there might have 25 been a -- some commercial real estate</p>

Page 134

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2 collateral, Archstone, in particular, and Mike  
3 Mazzei, who is -- ran commercial real estate at  
4 Barclays, is pinging the number to the guy in  
5 commercial real estate, Paul Houston at Lehman,  
6 to try to understand the nature of that of --  
7 well, he's trying to understand something about  
8 Archstone relative to that.  
9       **Q. What is Archstone?**  
10       A. Archstone is a very large commercial  
11 real estate financing that both Lehman and  
12 Barclays participated in in the fall of '07.  
13       **Q. Now, in the e-mail in which you're**  
14 **joined in the communication, Houston writes to**  
15 **O'Meara, Tonucci, Kirk and Walsh, "What should I**  
16 **tell him? That the assets are not going to**  
17 **Barclays?" Do you see that?**  
18       A. Uh-huh.  
19       **Q. What do you understand Mr. Houston to**  
20 **mean when he writes to you that the assets --**  
21 **"What should I tell them? That the assets**  
22 **aren't going to Barclays?"**  
23       A. Barclays had specifically told  
24 representatives of Lehman Brothers that they  
25 didn't want commercial real estate exposure.

Page 136

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       A. I don't know the answer to that.  
3       **Q. Did you ever hear a discussion about**  
4 **whether the racers could be taken out of the**  
5 **repo and other collateral substituted for them?**  
6       A. No.  
7       This, by the way, seems to indicate  
8 that the racers with the Archstone pieces  
9 were -- had custody at Chase, JPMorgan Chase.  
10       **Q. I'm about to move on to Tonucci where**  
11 **he says, "They are with Chase now." What does**  
12 **that mean in context? How does it address the**  
13 **problem that's being discussed in the e-mail?**  
14       A. There was an assumption by Paul  
15 Houston that Mike Mazzei was just fishing for  
16 information about Archstone which may be  
17 proprietary to Lehman Brothers that he would  
18 like for purposes other than the deal. So he  
19 was looking for a reason not to answer any  
20 questions about Archstone and because it  
21 wouldn't have been proper if their assets  
22 weren't being transferred, and Paolo is  
23 confirming that the assets would not be  
24 transferred because they're at Chase.  
25       **Q. Okay. So, with that answer in mind,**

Page 135

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       **Q. So, fairly understood, the issue here**  
3 **is that Barclays does not want the racers, yes?**  
4       A. Doesn't want commercial real estate.  
5 Racers might have a whole variety of collateral  
6 inside them.  
7       **Q. Do you know if the racers remained in**  
8 **the assets that were ultimately transferred to**  
9 **Barclays?**  
10       A. No idea.  
11       **Q. Do you know if there was any**  
12 **discussion with Barclays about whether or not**  
13 **the racers should remain in the value that**  
14 **ultimately was transferred to Barclays?**  
15       A. If they were in the repo, I believe  
16 they were transferred to Barclays because  
17 Barclays had possession of them. If they were  
18 not in the repo, I believe they were not in.  
19       **Q. Do you know if --**  
20       A. And again, this was a series of  
21 financings, so there was more than one Racers  
22 Trust.  
23       **Q. Do you know if at any point the racers**  
24 **were taken out of the repo and other collateral**  
25 **was substituted for that?**

Page 137

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **does this e-mail chain in your mind address any**  
3 **issue concerning whether the racers would stay**  
4 **in or not stay in the repo?**  
5       A. No.  
6       (Exhibit 318, a document bearing Bates  
7 Nos. 10325943 with attachment, marked for  
8 identification, as of this date.)  
9       **Q. Mr. Kirk, I have put before you two**  
10 **documents, one which we have marked as Exhibit**  
11 **318, a one-page document bearing numbers**  
12 **10325943. Withdrawn.**  
13       MR. KELLEY: On our copy the comment  
14 at the far left is, on some pages, partially  
15 blocked out.  
16       MR. GAFFEY: I don't have a copy of it  
17 yet. I see that.  
18       MR. KELLEY: That's not a good 318.  
19       MR. GAFFEY: Let me more clearly  
20 describe it for the record. Exhibit 318 is  
21 actually a multi-page document bearing  
22 number 10325943, annexed to which is a  
23 schedule which I agree, David, is miscopied  
24 so that some of the numbers down the  
25 left-hand side don't appear and there may

Page 138	Page 139
<p>1       HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2       actually be some numbers cut off at the</p> <p>3       bottom, but I'm not going to ask any</p> <p>4       questions about the specific numbers.</p> <p>5       BY MR. GAFFEY:</p> <p>6       Q.   Have you seen Exhibit 318 before,</p> <p>7       Mr. Kirk?</p> <p>8       A.   Yes.</p> <p>9       Q.   And what is the document?</p> <p>10      A.   This is a schedule of residential</p> <p>11      mortgage positions available for sale.</p> <p>12      Q.   Is this one of the schedules that we</p> <p>13      spoke about before the break that were prepared</p> <p>14      for the -- in connection with the Friday, the</p> <p>15      Friday project to see what assets could be</p> <p>16      transferred to Barclays?</p> <p>17      MR. HUME: Objection. Vague and</p> <p>18      ambiguous.</p> <p>19      A.   I don't know if this was in particular</p> <p>20      for that, but it appears to be so.</p> <p>21      Q.   Okay. Do you have a recollection of</p> <p>22      seeing this document on that Friday, on the</p> <p>23      19th, in connection with the work you were doing</p> <p>24      that day?</p> <p>25      A.   I took a cursory review of it, as I</p>	<p>1       HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2       recall.</p> <p>3       Q.   Would you take a look at what's</p> <p>4       previously been marked as Exhibit 9, which is</p> <p>5       also before you. Same question: Have you seen</p> <p>6       the document before?</p> <p>7       A.   Yes.</p> <p>8       Q.   And what is the document?</p> <p>9       A.   This is a schedule of CDs and</p> <p>10      short-term money market instruments that were</p> <p>11      available for sale.</p> <p>12      Q.   And again, the same question: Did you</p> <p>13      have this document, did you use this document in</p> <p>14      connection with the work you were doing on</p> <p>15      Friday, the 19th?</p> <p>16      A.   Yes.</p> <p>17      Q.   And for what purpose did you use it?</p> <p>18      A.   The same -- to be particular, I don't</p> <p>19      know if this is the document that was produced</p> <p>20      that was part of the 45 billion or it was a</p> <p>21      schedule that related to the 70 billion or it</p> <p>22      was something in between. I just don't know.</p> <p>23      Q.   Okay.</p> <p>24      A.   But all the documents that were</p> <p>25      produced were an attempt to get to the</p>
Page 140	Page 141
<p>1       HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2       equivalent of what actually could be sold to</p> <p>3       Barclays, this would have been one of them, and</p> <p>4       to be able to deliver to the experts to value</p> <p>5       them.</p> <p>6       Q.   Okay. I may be retreading a little</p> <p>7       bit a topic we addressed before the lunch break,</p> <p>8       and forgive me for that, but I want to make sure</p> <p>9       I have a clear understanding of your memory of</p> <p>10      this.</p> <p>11      In this work on Friday to find</p> <p>12      additional assets, the 15c3 and the unencumbered</p> <p>13      assets, I asked you that question about the</p> <p>14      broad spectrum, you know, just go find</p> <p>15      everything or go find a defined amount.</p> <p>16      Was the formula that was used there,</p> <p>17      in essence, keep finding assets until Barclays</p> <p>18      says that's enough?</p> <p>19      MR. HUME: Objection. Vague and</p> <p>20      ambiguous.</p> <p>21      A.   Again, I didn't -- I wasn't party to</p> <p>22      the discussion between Bart and Ian as to what</p> <p>23      the specifics of that was.</p> <p>24      (Exhibit 319, an e-mail chain, marked</p> <p>25      for identification, as of this date.)</p>	<p>1       HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2       Q.   You have before you, Mr. Kirk, a</p> <p>3       two-page document that we have marked as Exhibit</p> <p>4       319. Take a look through it. Let me know</p> <p>5       whether you've seen the document before, please.</p> <p>6       (Document review.)</p> <p>7       A.   Yes.</p> <p>8       Q.   And what's the document? Well, it</p> <p>9       appears to be a set of e-mails sent to and fro</p> <p>10      on the 19th of September. Do you recall seeing</p> <p>11      this e-mail chain at or around the time that</p> <p>12      these e-mails are dated?</p> <p>13      A.   Yes.</p> <p>14      Q.   And tell me what you remember about</p> <p>15      the circumstances under which this is of</p> <p>16      interest to you -- withdrawn.</p> <p>17      Why is this chain of e-mails of</p> <p>18      interest to you in the work you're doing on the</p> <p>19      19th?</p> <p>20      A.   Well, this is 5:30 in the afternoon.</p> <p>21      Everybody's left for court. Jim Seery asks me</p> <p>22      if I'm coming down to the courthouse. That's</p> <p>23      the first e-mail. I'm not planning on it. Do I</p> <p>24      have to, i.e., do they need to be down there?</p> <p>25      He replies no. We will be drinking later.</p>



Page 142	Page 143
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       I reply, "I'm here. I'm close to the</p> <p>3       building. How long will you guys be down</p> <p>4       there?" "Give you an idea after we start."</p> <p>5       "Sounds like hours." "What is the value of</p> <p>6       collateral Barclays posted to the DTC today?" I</p> <p>7       answered, "I believe it's 45 and a half."</p> <p>8       Billion would be the number, would be the big</p> <p>9       number. "I don't know the marked value,"</p> <p>10      meaning I don't know what the change in the</p> <p>11      value might have been between the marks on</p> <p>12      Thursday night that they accepted and what --</p> <p>13      what had been attempted to agree to on Friday.</p> <p>14      <b>Q. Okay. The 45.5, let me see if I can</b></p> <p>15      <b>put a little context to this. When you get this</b></p> <p>16      <b>last e-mail from Mr. Seery in this sequence, the</b></p> <p>17      <b>one with the time of 5:51 on the Friday?</b></p> <p>18      A. Uh-huh.</p> <p>19      <b>Q. Is it your understanding Mr. Seery is</b></p> <p>20      <b>down in court still?</b></p> <p>21      A. Yes.</p> <p>22      <b>Q. And Seery is writing to you to ask</b></p> <p>23      <b>what the value of the collateral was that</b></p> <p>24      <b>Barclays posted to the DTC. What do you</b></p> <p>25      <b>understand Seery to mean when he's describing it</b></p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       <b>as the collateral that Barclays posted to the</b></p> <p>3       <b>DTC?</b></p> <p>4       A. The collateral that they would have</p> <p>5       held in the DTC account at Bank of New York,</p> <p>6       bank, you know, that they had taken over from</p> <p>7       the Fed, the repo.</p> <p>8       <b>Q. Is that the collateral in the repo?</b></p> <p>9       A. Yes.</p> <p>10      <b>Q. And you put the value in your response</b></p> <p>11      <b>at 45.5 billion, correct?</b></p> <p>12      A. Yes.</p> <p>13      <b>Q. And you're distinguishing in your</b></p> <p>14      <b>response the difference between the marked value</b></p> <p>15      <b>and what kind of value? The actual value? The</b></p> <p>16      <b>fair value?</b></p> <p>17      A. Whatever the stated value of the</p> <p>18      transfer was, which Barclays had indicated all</p> <p>19      day that they weren't sure what the actual value</p> <p>20      of the collateral was, so that 45 was the stated</p> <p>21      value versus, as I said, I didn't know what the</p> <p>22      marked value or the market value was.</p> <p>23      <b>Q. Okay. Now --</b></p> <p>24      A. And it's probably meant to read</p> <p>25      "market." I probably just mistyped it.</p>
Page 144	Page 145
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       <b>Q. Now, the --</b></p> <p>3       I'm sorry, "marked," M-A-R-K-E-D, was</p> <p>4       supposed to read "market," is that what you --</p> <p>5       A. Probably.</p> <p>6       <b>Q. So the value of 45.5 that you referred</b></p> <p>7       <b>to here may go to a question I asked you before</b></p> <p>8       <b>the break, which was whether or not you became</b></p> <p>9       <b>aware of the value that was put on the repo</b></p> <p>10      <b>collateral by Bank of New York?</b></p> <p>11      A. I don't know if this is a number that</p> <p>12      was quoted to me by Barclays and it was a number</p> <p>13      they had at -- by Bank of New York or not. I</p> <p>14      just don't recall.</p> <p>15      <b>Q. Do you have any recollection of what</b></p> <p>16      <b>your source was for the \$45 and a half billion</b></p> <p>17      <b>number in your e-mail?</b></p> <p>18      MR. HUME: Objection. Asked and</p> <p>19      answered.</p> <p>20      A. I don't remember.</p> <p>21      <b>Q. Did you ever learn why it was that</b></p> <p>22      <b>Seery was asking you this question from the</b></p> <p>23      <b>courthouse?</b></p> <p>24      MR. KELLEY: Objection. Speculation.</p> <p>25      MR. HUME: Calls for speculation.</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       Objection.</p> <p>3       <b>Q. You can answer.</b></p> <p>4       A. I assume there was a good reason he</p> <p>5       needed it. I don't know what it was.</p> <p>6       <b>Q. Yeah, my question is a little</b></p> <p>7       <b>different. Did there come a time when you ever</b></p> <p>8       <b>knew, either at the time or later, why Seery</b></p> <p>9       <b>wanted to know this information from you?</b></p> <p>10      A. No, because it was impossible to</p> <p>11      communicate directly with him that evening.</p> <p>12      There was -- I didn't have a phone. I didn't</p> <p>13      have a conversation with him to have it</p> <p>14      explained to me.</p> <p>15      <b>Q. He's in the courthouse so he can't use</b></p> <p>16      <b>his phone.</b></p> <p>17      It doesn't matter. You can't speak to</p> <p>18      him by telephone?</p> <p>19      A. It's chaos.</p> <p>20      <b>Q. Now, did you ever learn, sir, what</b></p> <p>21      <b>value was described to the court of the deal as</b></p> <p>22      <b>it stood on Friday?</b></p> <p>23      A. No.</p> <p>24      (Exhibit 320, a document bearing Bates</p> <p>25      Nos. 10293820, marked for identification, as</p>

Page 146

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       of this date.)  
3       **Q. Mr. Kirk, you have before you what I**  
4       **have marked as Exhibit 320, a two-page chain of**  
5       **e-mails. Have you seen this document before?**  
6       A. I don't remember seeing this document,  
7       no.  
8       **Q. Do you recall learning that -- have**  
9       **you had a chance to look through the document?**  
10      **Sorry.**  
11      A. I don't recall this.  
12      **Q. Okay. Do you recall any**  
13      **conversation -- take a look at the chain of**  
14      **e-mails. You see it ends, it discusses Barclays**  
15      **closing out the repo with Lehman and taking all**  
16      **of the assets collateral, asking, further up,**  
17      **Jean-Francois Astier asks, "Is that part of the**  
18      **plan?" You respond, "Call my cell."**  
19      Do you see that?  
20      A. Right, uh-huh.  
21      **Q. Do you recall a conversation with him**  
22      **about that topic?**  
23      A. I don't recall speaking to JF about  
24      this specific topic.  
25      **Q. And JF is Mr. Astier?**

Page 148

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       wrong, your understanding was at the time that  
3       Barclays is taking both the collateral  
4       reflecting the financing amount of the repo and  
5       the haircut; is that correct?  
6       A. I don't remember understanding what it  
7       was exactly that they had done.  
8       **Q. Now, after writing back to JF, "Call**  
9       **my cell," he writes back to you, "I don't**  
10      **understand it either. Seery says it is okay.**  
11      **He is walking out to call you." Do you see**  
12      **that?**  
13      A. Yes.  
14      **Q. Now, I take it at 11:18 P.M. --**  
15      **actually, 7:18 P.M., with the adjustment for**  
16      **Greenwich mean time, on the 19th of February,**  
17      **Mr. Seery is still down in the courthouse,**  
18      **correct?**  
19      A. Yeah, they're all down there. JF is  
20      down there as well.  
21      **Q. And Seery can't use his phone to call**  
22      **you from the courthouse, we've talked about**  
23      **that, and he says, "Seery is walking out to call**  
24      **you." Do you recall getting a phone call from**  
25      **Mr. Seery that evening?**

Page 147

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       A. Jean-Francois Astier.  
3       **Q. And do you recall the topic coming up,**  
4       **whether you remember speaking to JF about it or**  
5       **not, the topic being Barclays taking all the**  
6       **collateral in the repo?**  
7       A. Without being refreshed by this  
8       e-mail, I didn't recall it.  
9       **Q. Does this e-mail refresh your**  
10      **recollection as to whether or not the topic came**  
11      **up?**  
12      A. Somewhat.  
13      **Q. What do you remember about it?**  
14      A. I think I remember knowing nothing  
15      about this being part of the plan or discussed  
16      prior to us going down to the courthouse.  
17      **Q. And when you say you remember nothing**  
18      **about it being part of the plan, do you mean you**  
19      **didn't know one way or the other, or you thought**  
20      **it wasn't part of the plan? Or you thought it**  
21      **wasn't part of the plan?**  
22      A. It was never discussed one way or  
23      another.  
24      **Q. So your understanding was at the time**  
25      **that Barclays was taking, correct me if I'm**

Page 149

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       A. Yes, but I don't recall what  
3       specifically the discussion was.  
4       **Q. Do you recall anything about the**  
5       **discussion?**  
6       A. No.  
7       **Q. But you do recall receiving a**  
8       **telephone call from Mr. Seery?**  
9       A. Yes, vaguely. This is refreshing my  
10      memory. He must have called me if he says he's  
11      going to.  
12      **Q. Does it refresh your memory, as you**  
13      **look further at the document, that you got a**  
14      **call and somehow the topic was the repo?**  
15      A. If it was, it wouldn't have been more  
16      beyond Jim just saying it's not a big deal,  
17      don't worry about it.  
18      **Q. Jim saying it's -- that the issue,**  
19      **that the issue's not a big deal, or the fact**  
20      **that Barclays' taking the collateral is not a**  
21      **big deal?**  
22      A. I think the issue, whatever that --  
23      which is Barclays taking collateral, so it's one  
24      and the same.  
25      **Q. And after around that time, around**

Page 150	Page 151
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       7:18 P.M. on that Friday, did you have a</p> <p>3       discussion with anyone else about Barclays</p> <p>4       taking the collateral that was in the repo at</p> <p>5       any point?</p> <p>6       A. No.</p> <p>7       Q. Did you talk to anybody about that</p> <p>8       over the weekend?</p> <p>9       A. No.</p> <p>10      Q. Was there any conversation about that</p> <p>11      when you and Mr. McDade were at Weil in</p> <p>12      connection with preparing for the closing?</p> <p>13      A. Not that I recall.</p> <p>14      Q. Do you know if the issue of Barclays</p> <p>15      taking the collateral in the repo was addressed</p> <p>16      at the closing in any way?</p> <p>17      A. I assume not, because if the</p> <p>18      transaction was that they were -- well, I don't</p> <p>19      remember is the better answer. I don't remember</p> <p>20      that being discussed.</p> <p>21      Q. And as you sit here today, you have no</p> <p>22      recollection of you yourself engaging in a</p> <p>23      conversation with anyone about Barclays taking</p> <p>24      the collateral that was in the repo?</p> <p>25      A. Except for a vague recollection that</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       Jim would have called me about it.</p> <p>3       Q. And just so I'm clear on that, because</p> <p>4       you're gesturing at the document saying "Jim</p> <p>5       would have," do you have a recollection --</p> <p>6       A. Yeah.</p> <p>7       Q. -- or are you just inferring that from</p> <p>8       the document?</p> <p>9       A. It's vague. I don't recall the</p> <p>10      specific conversation.</p> <p>11      Q. Okay.</p> <p>12      A. But if it had been an issue, I'm sure</p> <p>13      I would remember it.</p> <p>14      Q. Okay.</p> <p>15      A. Since it wasn't.</p> <p>16      Q. And from the discussions on Friday, it</p> <p>17      was your understanding that if Barclays got --</p> <p>18      if this value collection effort gave Barclays</p> <p>19      enough value to support the financing in the</p> <p>20      repo, that Lehman would get the excess back,</p> <p>21      right?</p> <p>22      MR. HUME: Objection.</p> <p>23      Mischaracterizes the testimony.</p> <p>24      A. I don't --</p> <p>25      MR. KELLEY: Do you want the question</p>
Page 152	Page 153
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       read back?</p> <p>3       THE WITNESS: Yeah, why don't you read</p> <p>4       the question back, please. I'm not quite</p> <p>5       sure exactly...</p> <p>6       (Record read.)</p> <p>7       MR. HUME: Same objection.</p> <p>8       A. No, that discussion never took place.</p> <p>9       There was too much uncertainty about the values.</p> <p>10      Q. Was there, in connection with this</p> <p>11      value of additional profit we talked about on</p> <p>12      Friday, was there any discussion about what it</p> <p>13      would take to get Barclays up to the value of</p> <p>14      the financing in the repo?</p> <p>15      A. Not that I was present at. I don't</p> <p>16      know if there were any away from me.</p> <p>17      Q. This sort of goes to a few other</p> <p>18      questions I have asked you about, whether there</p> <p>19      was a goal or a cap on how much had to be</p> <p>20      collected on Friday.</p> <p>21      Without regard to what the number may</p> <p>22      or may not have been, was the goal to find</p> <p>23      enough assets to replace the loss in value</p> <p>24      within the repo?</p> <p>25      MR. HUME: Objection. Vague and</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       ambiguous and lack of foundation.</p> <p>3       A. In the end, I was the witness to an</p> <p>4       agreement that was agreed to between Bart and</p> <p>5       Ian and the Barclays team, but I wasn't part of</p> <p>6       any discussions as to the basis for that</p> <p>7       agreement.</p> <p>8       Q. And the agreement that you were a</p> <p>9       witness to is the one you described to me before</p> <p>10      where they said, do we have a deal?</p> <p>11      A. Yes.</p> <p>12      Q. And the agreement was we have a deal.</p> <p>13      (Exhibit 321, a document bearing Bates</p> <p>14      Nos. AK-LB-BANKR00002 through 27, marked for</p> <p>15      identification, as of this date.)</p> <p>16      Q. Mr. Kirk, I have put before you a</p> <p>17      document bearing Bates number AK-LB-BANKR000002</p> <p>18      through 27. Do you recognize the document?</p> <p>19      A. Yes.</p> <p>20      Q. What is it?</p> <p>21      A. It's a notebook.</p> <p>22      Q. Is it your notebook?</p> <p>23      A. Yes, my notebook.</p> <p>24      Q. Is it in your handwriting?</p> <p>25      A. Yes.</p>

Page 154	Page 155
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       <b>Q. During the course of your work in</b></p> <p>3 <b>connection with the Barclays matter, did you</b></p> <p>4 <b>carry the same notebook from place to place?</b></p> <p>5 <b>What was your habit with respect to taking</b></p> <p>6 <b>notes?</b></p> <p>7       MR. KELLEY: Objection. Do you</p> <p>8 understand the "Barclays matter."</p> <p>9       THE WITNESS: What?</p> <p>10       <b>Q. Withdrawn. Did you take these notes</b></p> <p>11 <b>during the week of the 15th to the 22nd that</b></p> <p>12 <b>we've been talking about today?</b></p> <p>13       A. From the 11th or -- 10th or 11th to</p> <p>14 the -- yeah.</p> <p>15       <b>Q. Okay. Some of these notes may go back</b></p> <p>16 <b>to the period before the weekend?</b></p> <p>17       A. Yes.</p> <p>18       <b>Q. Is that what you're telling me?</b></p> <p>19       A. Yes.</p> <p>20       MR. HUME: May I ask a question? Were</p> <p>21 these notes produced to Barclays by anyone.</p> <p>22       MR. GAFFEY: I have no idea. They</p> <p>23 were produced by the witness pursuant to the</p> <p>24 subpoena.</p> <p>25       <b>Q. Are you able to tell me from looking</b></p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2 <b>at your notes, Mr. Kirk, when you took these</b></p> <p>3 <b>notes?</b></p> <p>4       A. Some of them, yes.</p> <p>5       <b>Q. Let's just take a minute. I don't</b></p> <p>6 <b>want you to go through every page, but tell me</b></p> <p>7 <b>how you're dating it because there's no dates on</b></p> <p>8 <b>any of the pages.</b></p> <p>9       A. This looks like it would have been</p> <p>10 Friday, the 12th, first page.</p> <p>11       <b>Q. Okay. And you're making that</b></p> <p>12 <b>inference from the kind of notes you have here</b></p> <p>13 <b>that's what was being discussed then?</b></p> <p>14       A. That's correct.</p> <p>15       <b>Q. Could you go, if you don't mind, maybe</b></p> <p>16 <b>we can save you some time, if you would go</b></p> <p>17 <b>through the notes and tell me at what point they</b></p> <p>18 <b>pick up, if at all, on the events that begin on</b></p> <p>19 <b>the Sunday night, the 15th. I meant Sunday, the</b></p> <p>20 <b>14th, I'm told.</b></p> <p>21       (Document review.)</p> <p>22       A. Page 14.</p> <p>23       <b>Q. Okay. And just so I can put it in</b></p> <p>24 <b>some kind of context, what is it about page 14</b></p> <p>25 <b>that tells you this picks up on the night of</b></p>
Page 156	Page 157
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2 <b>Sunday, the 14th?</b></p> <p>3       A. Because this is dealing with issues</p> <p>4 that we might have -- hold on one second. Hold</p> <p>5 on. I apologize. I'm wrong. Sorry. Hold on.</p> <p>6       14 I'm not sure about. That may</p> <p>7 actually still have to do with the morning of</p> <p>8 attempting to get the Barclays deal done and how</p> <p>9 we would deal with that with Spinco. This</p> <p>10 reference to Shafron is what makes me think that</p> <p>11 it is because Steve was the point on Treasury</p> <p>12 with us. He works for Treasury.</p> <p>13       <b>Q. So once I see Steve Shafir's name at</b></p> <p>14 <b>page --</b></p> <p>15       A. Shafron.</p> <p>16       <b>Q. Shafron, I see.</b></p> <p>17       A. Right. That indicates I'm still</p> <p>18 trapped at the Fed. Okay? There's notes here</p> <p>19 with the reference to tri-party repo labeled</p> <p>20 number 1 on page 16 is during our discussions</p> <p>21 with the Fed, and the following pages prior to</p> <p>22 filing but when they were encouraging us to</p> <p>23 file.</p> <p>24       <b>Q. Now, if you would turn to page --</b></p> <p>25       A. So that's during that period of time.</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2 Hold on. That goes through the 18. Yeah, I</p> <p>3 think that's through 18. Those are all notes</p> <p>4 from the meeting with the Fed and the Treasury</p> <p>5 representatives between 4 and 7 o'clock Sunday.</p> <p>6       <b>Q. Okay. Now, are the notes sequential</b></p> <p>7 <b>after that? Can I -- I'm trying to get a course</b></p> <p>8 <b>of dealing here. Can I kind of work on the</b></p> <p>9 <b>assumption that we're at Sunday or after as I go</b></p> <p>10 <b>through the rest of these notes?</b></p> <p>11       I note that it's a spiral notebook,</p> <p>12 and that's one of the reasons I'm asking that</p> <p>13 question. Are you writing as you go?</p> <p>14       A. I don't know that these are all in the</p> <p>15 same order, but let me just look. Sometimes you</p> <p>16 end up inadvertently skipping a page.</p> <p>17       Yeah, these are -- these next through</p> <p>18 23 are --</p> <p>19       <b>Q. Okay.</b></p> <p>20       A. -- sequential.</p> <p>21       <b>Q. Can we go to 23, please?</b></p> <p>22       A. Yes.</p> <p>23       <b>Q. There's a list of what appear to be</b></p> <p>24 <b>names on there, Chambers, Orlan, Assi, Seery, do</b></p> <p>25 <b>you see that?</b></p>

Page 158

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 A. Yes.  
3 Q. Anything to add? Any knowledge as to  
4 why you're listing those eight names there?  
5 A. I don't recall specifically. Some of  
6 these people I'm responsible for, some of them  
7 I'm not, so I don't recall exactly what this  
8 list was -- why it's there. This would have  
9 been during the week, early in the week of the  
10 15th.  
11 Q. And if you would turn to starting at  
12 page 24, it's the following four pages are --  
13 following three pages are a typewritten balance  
14 sheet of some kind.  
15 Are we in the same place?  
16 A. Yes.  
17 Q. And it's entitled Funding 2008 Q3  
18 Balance Sheet?  
19 A. This was a schedule which was faxed to  
20 Bart Saturday morning at the Fed that he and I  
21 used to prepare for a meeting with John Mack,  
22 Vickram Pandit, John Thayne and their associates  
23 to discuss the possible iterations of Lehman  
24 Brothers going forward. This was those -- that  
25 was the first -- well, that's the first pages of

Page 160

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 Q. Do you know, these numbers on the  
3 right-hand side, 1B and 1.7B, what do they  
4 represent?  
5 A. I don't recall what they represent.  
6 (Exhibit 323, a document bearing Bates  
7 Nos. AK-LB-BANKR000030, marked for  
8 identification, as of this date.)  
9 Q. You have before you, Mr. Kirk, what we  
10 have marked as Exhibit 323, bearing Bates number  
11 AK-LB-BANKR000030. Are these notes in your  
12 handwriting?  
13 A. Yes.  
14 Q. Can you, as you look at them, do you  
15 remember the circumstances under which you took  
16 the notes?  
17 A. I think these were notes on Sunday  
18 during the closing.  
19 Q. And why is it you think they're notes  
20 on Sunday during the closing?  
21 A. Because I see a reference to Alastair,  
22 which would be Alastair Blackwell, who I didn't  
23 deal with prior to Sunday, and Tom Hamilton, who  
24 was head of mortgage trading at Barclays, who  
25 was trying to deal with this issue of the

Page 159

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 funding.  
3 This second page is a -- is an  
4 analysis that B of A did marking down our assets  
5 earlier in the week, which we also discussed at  
6 that meeting. B of A's valuation of Lehman  
7 Brothers' assets.  
8 Q. You can put that aside. I'm done with  
9 that document.  
10 A. Okay.  
11 (Exhibit 322, a document bearing Bates  
12 Nos. AK-LB-BANKR000028, marked for  
13 identification, as of this date.)  
14 Q. Before you, Mr. Kirk, is Exhibit 322,  
15 a one-page set of notes bearing Bates number  
16 AK-LB-BANKR000028. Is that your handwriting?  
17 A. Yes.  
18 Q. Do you have any recollection of making  
19 these notes?  
20 A. Yeah, this was somebody trying to  
21 explain to me in broad terms what 15c3-3 was.  
22 Q. Okay. I take it you're looking at the  
23 reference to customer accounts segregated in  
24 margin in the box in the upper left-hand corner.  
25 A. I'm looking at the whole page, yes.

Page 161

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 settlements.  
3 The dispute that arose on Sunday was  
4 who was going to guarantee the settlements of  
5 the trades that were supposed to settlement on  
6 Lehman Brothers' account starting Monday  
7 morning.  
8 Q. And that dispute, broadly speaking,  
9 involved DTC needing some comfort as to who was  
10 going to guarantee those settlements?  
11 A. Yes.  
12 Q. Now, on the notes themselves there is,  
13 amidst the names and above the name Tom Hamilton  
14 and Harry Harnson -- I'm just giving you that  
15 for placement on the document.  
16 A. Uh-huh.  
17 Q. -- is what appears to be an Assets and  
18 Liabilities column; is that right?  
19 A. Yes.  
20 Q. Okay. Can you explain to me what that  
21 represents?  
22 A. To the extent that I understand it, it  
23 represents some assets of 45 and a half billion,  
24 goodwill would be the next line of 250 million,  
25 and then it had a loan from BarCap that says 45

Page 162	Page 163
<p>1           HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2   and a half, and then payables or trade payables,</p> <p>3   or whatever they are, cure payments and comp of</p> <p>4   2 and a quarter and 2 billion on it.</p> <p>5   <b>Q. Is that your understanding of the</b></p> <p>6   <b>balance sheet of the deal that was agreed on</b></p> <p>7   <b>Friday?</b></p> <p>8       MR. HUME: Objection. Lacks</p> <p>9       foundation.</p> <p>10    A. I don't remember if this was -- this</p> <p>11    was probably more a broad generalization than a</p> <p>12    specific.</p> <p>13    <b>Q. I recognize it's some handwritten</b></p> <p>14    <b>notes and it's got scratches all over it, sir.</b></p> <p>15    <b>I'm not giving it any greater dignity than that,</b></p> <p>16    <b>but my question is, really goes to the 45.5 on</b></p> <p>17    <b>the asset side and the 45.5 on the liability</b></p> <p>18    <b>side.</b></p> <p>19    A. I don't remember for this specific</p> <p>20    document and why I was scratching this out that</p> <p>21    way.</p> <p>22    <b>Q. You do see on the liability side the</b></p> <p>23    <b>amount for payables at 2.25 billion, correct?</b></p> <p>24    A. Yes.</p> <p>25    <b>Q. And the amount for comp at 2 billion,</b></p>	<p>1           HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2   correct?</p> <p>3    A. Yes.</p> <p>4    <b>Q. And those were the assumed liabilities</b></p> <p>5    <b>that had stayed in the deal from the first time</b></p> <p>6    <b>you saw it, right?</b></p> <p>7    A. This would have been -- yes, but I</p> <p>8    don't know, I don't recall anybody warranting to</p> <p>9    me what all these numbers were or if I was just</p> <p>10   scratching them down from a press release or...</p> <p>11   <b>Q. Actually, I should ask you that. Do</b></p> <p>12   <b>you recall the source? Is this something you're</b></p> <p>13   <b>reading? Something somebody is saying?</b></p> <p>14    A. I don't recall whether this was</p> <p>15    something somebody was saying or if I was</p> <p>16    reading a press release or a, you know, a</p> <p>17    newspaper account or something.</p> <p>18    <b>Q. Do you have any understanding with the</b></p> <p>19    <b>repo in mind of whether the agreement made on</b></p> <p>20    <b>Friday was that Barclays would get 45.5 out of</b></p> <p>21    <b>the repo --</b></p> <p>22       MR. HUME: Objection.</p> <p>23       MR. GAFFEY: You got to wait until I'm</p> <p>24       done, Hamish.</p> <p>25       MR. HUME: I thought you were.</p>
Page 164	Page 165
<p>1           HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2   <b>Q. Do you have any understanding with the</b></p> <p>3   <b>repo in mind of whether the agreement made on</b></p> <p>4   <b>Friday was that Barclays would get 45.5 out of</b></p> <p>5   <b>the repo in return for 45.5 in funding?</b></p> <p>6       MR. HUME: Objection. Lack of</p> <p>7       foundation.</p> <p>8    A. I'm not sure, actually. They had</p> <p>9    funded the firm for that amount on Thursday, so</p> <p>10   I --</p> <p>11   <b>Q. I see the problem. Let me rephrase</b></p> <p>12   <b>the question. You understood that Barclays had</b></p> <p>13   <b>funded the firm for 45.5 the prior Thursday,</b></p> <p>14   <b>correct?</b></p> <p>15    A. Thursday or Friday, right.</p> <p>16    <b>Q. Okay. And on the Friday, you</b></p> <p>17    <b>understood that the deal had changed so that the</b></p> <p>18    <b>collateral in the repo was what would be</b></p> <p>19    <b>transferred to Barclays, correct?</b></p> <p>20    A. Correct.</p> <p>21    <b>Q. Did these notes reflect your</b></p> <p>22    <b>understanding that what would be transferred to</b></p> <p>23    <b>Barclays was the amount in the repo sufficient</b></p> <p>24    <b>to cover the amount they had funded?</b></p> <p>25       MR. HUME: Objection.</p>	<p>1           HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2   <b>Q. They were supposed to balance?</b></p> <p>3       MR. HUME: Objection. Vague and</p> <p>4       ambiguous as to what the values they had</p> <p>5       funded.</p> <p>6    <b>Q. Do you have the question in mind? Do</b></p> <p>7    <b>you want it read?</b></p> <p>8    A. No. No, I understand the question.</p> <p>9    I'm just saying there were lots of moving parts,</p> <p>10   so I don't know that those were exactly supposed</p> <p>11   to balance in that.</p> <p>12   <b>Q. Was it your understanding they were</b></p> <p>13   <b>roughly supposed to balance?</b></p> <p>14       MR. HUME: Objection. Vague and</p> <p>15       ambiguous.</p> <p>16    A. Again, I don't -- I didn't have an</p> <p>17    understanding of that. I didn't know how much</p> <p>18    would be made up from the shortfall of other</p> <p>19    assets versus the repo. Once they went to</p> <p>20    court, I wasn't dealing with valuation issues,</p> <p>21    so ...</p> <p>22    <b>Q. Apart from the source of assets to be</b></p> <p>23    <b>given to Barclays, was it your understanding</b></p> <p>24    <b>that what was to be given to Barclays was to be</b></p> <p>25    <b>equal to the amount that Barclays had funded?</b></p>

Page 166

**HIGHLY CONFIDENTIAL - A. KIRK**

MR. HUME: Objection.

MR. KELLEY: Objection. Speculation.

Misstates prior answers.

MR. HUME: Vague and ambiguous as to valuation.

A. I didn't have that understanding.

**Q. Did you have --**

A. Nowhere did anybody say they should be equal.

**Q. Okay. Did you have an understanding that Barclays was going to get more than it had funded?**

A. In terms of assets?

**Q. Yes.**

A. Yeah, they were going to get assets that were unencumbered.

**Q. And when you added the unencumbered to the amount in the repo, was it your understanding that Barclays was going to take more out than it had funded into the repo?**

A. Well, they were also assuming other liabilities away from the repo.

**Q. I understand that.**

**Did you understand they were going to**

Page 167

**HIGHLY CONFIDENTIAL - A. KIRK**

**take out more than they had funded into the repo?**

MR. KELLEY: Objection. That's based on speculation. Calls for speculation, I should say.

THE WITNESS: So I --

**Q. You can answer that question.**

MR. KELLEY: It just asks him to identify the source of his knowledge.

MR. GAFFEY: No, I'm going to ask him to answer the question I asked.

Will you read it back?

(Record read.)

A. I don't understand the nature of, when you say "take out more," what does that mean?

**Q. Barclays funds the repo to the tune of \$45.5 billion, you understand that, right?**

A. Right.

**Q. In the asset transfer agreement that's at issue for the bankruptcy court, Barclays is going to take a certain amount of assets out of Lehman, correct?**

A. Yes.

**Q. Was it your understanding that that**

Page 168

**HIGHLY CONFIDENTIAL - A. KIRK**

**latter bucket of assets was to equal or to exceed the amount that Barclays had paid into the repo for funding?**

MR. HUME: Again, objection. Vague and ambiguous as to the valuations posed in your question.

A. My understanding was the totality of the assets should attempt to get somewhere close to covering all the liabilities.

**Q. The liabilities, you mean the liabilities in the repo plus the assumed liabilities?**

A. Yes.

**Q. Is that what you mean?**

MR. HUME: Objection to the phrase "assumed liabilities."

A. Yes.

**Q. And the assumed liabilities you're referring to are the assumed liabilities for payable and comp in the amount of 4.25 billion, correct?**

A. Correct, and then ultimately the assumed liabilities in guaranteeing the trading obligations which they were agreed to do come

Page 169

**HIGHLY CONFIDENTIAL - A. KIRK**

Sunday.

**Q. Okay. And do you know what the resolution was of the issue of guaranteeing -- the dollar resolution was of the guarantee of the trading liabilities?**

A. I don't recall specifically, but they agreed to I think fund into DTC some amount of cash to make good on the liabilities. I don't remember what the number was.

**Q. Do you recall that the number was about \$250 million?**

A. Sounds reasonable.

**Q. Okay. So Barclays is to take out of the deal an amount roughly in balance to the amount in the repo, the assumed liability for comp, the assumed liability for payables, and the guarantee to the DTC; is that your understanding?**

MR. HUME: Object to the form of the question.

A. And the goodwill.

**Q. And the goodwill. And the goodwill is about 250 million, correct?**

A. Right, so that -- well, they were

Page 170

1           **HIGHLY CONFIDENTIAL - A. KIRK**  
2    buying the business of Lehman Brothers and they  
3    were buying a whole bunch of assets which had,  
4    in my opinion, quite uncertain value so that  
5    they could lose many billions of dollars or make  
6    many billions of dollars on those assets given  
7    the volatility of the markets, and in addition  
8    to that, they would obviously get the ongoing  
9    operations of Lehman Brothers.  
10   **Q. Was it your understanding that --**  
11    A. So that it was --  
12    **Q. Sorry.**  
13    A. What I would say is that, in my  
14    opinion, there was, at least from my seat, no  
15    way to know what the actual value of those  
16    assets would end up being for Barclays, you  
17    know, over -- because I had no idea what  
18    strategies they were going to pursue about those  
19    assets, whether they were going to hedge them,  
20    you know, all the variety of things that they  
21    might end up choosing to do to execute a large,  
22    huge block of -- the size of a transfer of this  
23    size of assets is, you know, enormous and at the  
24    time maybe even unprecedented.  
25   **Q. Was it your understanding that the**

Page 172

1           **HIGHLY CONFIDENTIAL - A. KIRK**  
2    Bates number AK-LB-BANKR000097 through 119. Do  
3    you recognize the document?  
4    A. Yes.  
5    **Q. What is the document?**  
6    A. This is a document that describes the  
7    deal that was cut early in the week between  
8    Lehman and Barclays.  
9    **Q. Is that your handwriting on the**  
10   document?  
11   A. No.  
12   **Q. Do you know whose handwriting it is on**  
13   the document?  
14   A. No.  
15   **Q. I would note that the document was**  
16   produced to us by you. Do you know how you came  
17   into possession of this document with somebody  
18   else's handwriting on it? Any memory?  
19   A. No, I don't know what this is.  
20   **Q. Do you have any knowledge of what the**  
21   annotations mean on the asset side where  
22   somebody has written "ACT" and "HC"?  
23   A. No.  
24   **Q. Would you understand the phrase "HC"**  
25   to mean haircut?

Page 171

1           **HIGHLY CONFIDENTIAL - A. KIRK**  
2    transaction was supposed to give Barclays a gain  
3    on day one?  
4    A. No.  
5    **Q. I hear what you're saying about longer**  
6   term they may operate the business and make  
7   money out of it. The question about day one, I  
8   want to be sure we're --  
9   A. Yeah.  
10   **Q. -- hearing each other here. Was it**  
11   your understanding that there was any immediate  
12   gain embedded for Barclays in the deal that was  
13   made on Friday?  
14   MR. HUME: Objection. Lacks  
15   foundation.  
16   A. No, there was no understanding on my  
17   part that there was a gain.  
18   (Recess; Time Noted: 2:10 P.M.)  
19   (Time Noted: 3:15 P.M.)  
20   (Exhibit 324, a document bearing Bates  
21   Nos. AK-LB-BANKR0000987 through 119, marked  
22   for identification, as of this date.)  
23   BY MR. GAFFEY:  
24   **Q. Mr. Kirk, you have before you what we**  
25   have marked as Exhibit 324, a document bearing

Page 173

1           **HIGHLY CONFIDENTIAL - A. KIRK**  
2    A. That could be.  
3    **Q. Would you understand the phrase "ACT"**  
4   to mean actual?  
5   A. That's not usually a vernacular, but  
6   maybe.  
7   **Q. I asked you --**  
8   A. It could be "account."  
9   **Q. Could be. I don't know what your --**  
10   A. Yeah. Yeah.  
11   **Q. I asked you earlier this morning if**  
12   you had any knowledge of a discount or a haircut  
13   being given to Barclays on the book value of the  
14   assets being traded for in the early part of the  
15   week. Does this refresh your recollection as to  
16   whether there was an agreement on the deal as it  
17   originally was made on Monday and Tuesday to  
18   give Barclays a discount from book value?  
19   A. No.  
20   **Q. Could you put before you Exhibit 19?**  
21   It's within the pile.  
22   A. What does it look like?  
23   **Q. It's the other copy of that financial**  
24   statement, the one-pager.  
25   A. Yeah.



Page 174

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       Q. I'm just going to take a fly around  
3 this just because I wonder if you know.  
4       This document, if you compare it to  
5 Exhibit 19, that is, Exhibit 324 is identical to  
6 Exhibit 19, except for two things: One is the  
7 handwritten note in the upper right-hand corner  
8 in 19 and the other is the time stamp in the  
9 lower right-hand corner.  
10       You see one is generated 11:18 and one  
11 is generated at 11:19?  
12       A. Okay.  
13       Q. Do you have any knowledge of how this  
14 schedule was being generated or who was  
15 generating it?  
16       A. No, I don't even know why I had this  
17 document. Whatever documents I had I gave to  
18 David, he gave to you.  
19       Q. Okay. I have nothing further at this  
20 time.  
21       Oh, sorry, I lied. I have one more.  
22       (Exhibit 325, a document bearing Bates  
23 Nos. AK-LB-BANKR000188, marked for  
24 identification, as of this date.)  
25       A. Okay.

Page 176

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       A. Meaning that Lehman didn't survive and  
3 thrive as an independent entity.  
4       MR. GAFFEY: Okay. Now I have nothing  
5 further. Thanks.  
6       I have to pass you down to my friends.  
7 EXAMINATION BY  
8 MR. ROTHMAN:  
9       Q. Good afternoon. My name is Seth  
10 Rothman. We met earlier. I represent the  
11 trustee who's been appointed under the SIPA  
12 statute to liquidate LBI.  
13       A. Okay.  
14       Q. If you would dig out of the pile of  
15 exhibits in front of you number 322. These are  
16 your handwritten notes, correct?  
17       A. Yes.  
18       Q. In the upper left-hand corner at the  
19 top of the page, there's a box that's divided in  
20 two. It says "Customer Account Seg" in the top?  
21       A. Uh-huh.  
22       Q. Correct? And then underneath it says  
23 "Margin." Can you tell me what that represents?  
24       A. Okay. My recollection was somebody  
25 was trying to explain to me how the 15c3 margin

Page 175

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       Q. Before you, Mr. Kirk, is a one-page  
3 document from amongst the documents that you  
4 produced, and its number is AK-LB-BANKR0000188.  
5       A. Uh-huh.  
6       Q. Do you recognize the document?  
7       A. Yes.  
8       Q. And the first e-mail in the series,  
9 the earlier one, is from you saying, "Today is  
10 my last day at BarCap/Lehman. I want to thank  
11 everyone for all their help over the years," and  
12 you give your contact information, do you see  
13 that?  
14       A. Uh-huh.  
15       Q. And the next e-mail up is a response  
16 from Mr. McGee to you, do you see that?  
17       A. Uh-huh.  
18       Q. Where he says, "You are a talent and a  
19 good guy. You were amazing through the final  
20 months. I am sorry we didn't pull it off. Best  
21 of luck." Do you see that?  
22       A. Uh-huh.  
23       Q. Do you know what Mr. McGee was  
24 referring to when he said, "I'm sorry we didn't  
25 pull it off"?

Page 177

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       worked, and it was, my recollection from  
3 reviewing this document, it was different than  
4 between high-net worth individuals and Neuberger  
5 Berman, so that's why there's four boxes instead  
6 of two.  
7       I don't remember the distinct  
8 difference, but the customer accounts, the  
9 individual customer accounts in the  
10 high-net-worth business were held in individual  
11 accounts. In each of them there was some margin  
12 that Lehman had to support those accounts. It  
13 was regulatory -- required by regulation.  
14       Q. Are you familiar with the concept of a  
15 margin deposit to cover short positions?  
16       A. I'm familiar with that concept.  
17       Q. Is that what you were referring to  
18 here when you write margin?  
19       A. I don't know if it was that or if  
20 there were other margin requirements that were  
21 required by the regulators. I don't know if it  
22 was specifically that or if it was overall  
23 margin or if the margin is not required on  
24 others.  
25       Q. Over on the right it looks like you

Page 178

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 wrote 500, is that million?  
3 A. It looks like that, yeah.  
4 Q. Do you know if that relates to the  
5 margin box on the left?  
6 A. It appears to, but none of these  
7 numbers add up in those columns over there, so  
8 I'm not sure what it refers to exactly.  
9 Q. Do you recall any discussions  
10 concerning the margin deposit that LBI had with  
11 the OCC?  
12 A. With the?  
13 Q. OCC.  
14 A. Who's that? What's that? The office  
15 of --  
16 Q. The Options Clearing --  
17 A. Oh, no.  
18 Q. -- Corp.  
19 A. Those typically would have been equity  
20 options positions. I assume would have been  
21 mostly equity, so it was not my bailiwick. I  
22 was not involved in that.  
23 Q. In your work on the transaction, did  
24 you hear any discussions about whether margin  
25 deposits would be transferred to Barclays?

Page 180

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 government securities in terms of what was  
3 settling.  
4 So I was involved only to the extent  
5 that I tracked down through Kaushik Amin and  
6 Jeff Michaels, who ran agency and government  
7 bond trading, to get him in touch with the  
8 mortgage people at Barclays to explain to them  
9 how what the market risk in those positions and  
10 settlement risk in those positions would be.  
11 So I set up a call. I reached Jeff  
12 Michaels on the phone, I tracked him down, and  
13 then I got him to speak to the Barclays  
14 representatives by phone. I didn't participate  
15 in those conversations.  
16 Q. Who is Jeff Michaels?  
17 A. Head of government agency trading at  
18 Lehman Brothers in the U.S. -- globally, I  
19 think.  
20 Q. You also mentioned in response to  
21 Mr. Gaffey's questions a guarantee relating to  
22 this issue.  
23 A. We were informed that the issue had  
24 been settled later in the day along with there  
25 was a, what I referred to as a global settlement

Page 179

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 A. I don't recall.  
3 Q. You can put that aside.  
4 A. Okay.  
5 Q. And you mentioned that there was a  
6 dispute involving the DTC. Do you recall that?  
7 A. Yes.  
8 Q. That arose on Sunday while you were up  
9 at Weil?  
10 A. Yes.  
11 Q. When did you become aware of that  
12 dispute? At what point during the day?  
13 A. It would have been somewhere, sometime  
14 between 10 and 2, 10 A.M. and 2 P.M.  
15 Q. And how did you become aware of that?  
16 A. I don't recall who told us it was an  
17 issue, but someone informed Bart and I in the  
18 room that there was an issue with the  
19 settlements and those obligations going forward.  
20 Q. So you yourself weren't involved or  
21 participating directly in any of those  
22 discussions?  
23 A. We were informed there was an issue.  
24 We were informed that it -- a big piece of the  
25 issue had to do with TBAs, mortgage trades, and

Page 181

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 between JPMorgan and Barclays. We were not  
3 given details, but I do recall one detail we  
4 were given was that they had agreed to guarantee  
5 the trades. They had gotten enough information  
6 and the DTC was comfortable to settle trades the  
7 next day. We couldn't open for business with  
8 this cash deposit.  
9 Q. When you say they had agreed to  
10 guarantee the trade?  
11 A. Barclays.  
12 Q. And did you understand the guarantee  
13 to be \$250 million or --  
14 A. I don't know if -- I remember the  
15 amount, that amount being discussed as being put  
16 as a deposit. I don't remember if there were  
17 additional parts of the guarantee that were  
18 described beyond that. There might have been.  
19 Q. Did you hear that there was a concern,  
20 any concern on the part of the DTC that it might  
21 be exposed if the trades didn't settle?  
22 A. I remember that being discussed at  
23 some point in the day as the reason as to why  
24 all the DTC trades had failed on Friday, and DTC  
25 was concerned that if they reopened, they would

Page 182

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 be assuming all kinds of risks from failed  
3 trades on Friday and in addition to the trades  
4 going forward on Monday, and that they wanted  
5 some -- they needed a margin safety to be able  
6 to do that. So they were concerned that they  
7 were exposed.

8 Q. And did you hear anything about the  
9 extent of that exposure?

10 A. No.

11 Q. Do you know if the deposit or the  
12 guarantee was meant to cover the entire  
13 potential exposure?

14 A. I don't know the answer to that.  
15 Those discussions happened directly, that is, my  
16 understanding those discussions happened  
17 directly between DTC and Barclays.

18 Q. Do you know if there was a written  
19 agreement?

20 A. I don't know that.

21 Q. You never saw a written agreement  
22 resolving this dispute with the DTC?

23 A. No. No.

24 Q. Did you hear anything about what would  
25 happen to the guarantee if it turned out not to

Page 183

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 be used?

3 A. No.

4 Q. Changing the subject. You mentioned  
5 back on September 14 that Mr. McDade told you  
6 that the first transaction that was being  
7 discussed with Barclays wasn't going to go  
8 forward. Do you remember that?

9 A. Yes.

10 Q. And I think you said he told you that  
11 the FSA had turned down the application to close  
12 that transaction?

13 A. Yes.

14 Q. Did he tell you why?

15 A. Yes, that Barclays needed a waiver to  
16 guarantee the trading obligations -- I'm sorry,  
17 Barclays -- for Lehman to -- for them to close  
18 the transaction, they would have to get a  
19 shareholder vote, which would take some period  
20 of time, I forget if it was 30 or 45 days, but  
21 some reasonable period of time, and that it was  
22 the view of all the participants, including  
23 Treasury and the Fed and everybody, that Lehman  
24 would not make it for 30 days without somebody  
25 else guaranteeing the trading obligations for

Page 184

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 that period of time.

3 The only person who would do that was  
4 Barclays. Barclays apparently needed a waiver  
5 of shareholder approval to make that guarantee,  
6 which the FSA deemed they would not give.

7 Q. Okay. Let me now switch topics again  
8 and take you back to the Friday meeting that you  
9 testified that I think you said started around 3  
10 o'clock on Friday afternoon?

11 A. Uh-huh.

12 Q. This is the meeting that you had with,  
13 among others, Mr. Klein, Mr. Diamond and  
14 Mr. Keegan from Barclays?

15 A. Uh-huh.

16 Q. You have to give me an out-loud  
17 answer --

18 A. Yes.

19 Q. -- for the court reporter. Thanks.

20 Was Mr. McDade physically present in  
21 that meeting or is he on the phone?

22 A. He's on the phone.

23 Q. And were there any discussions about  
24 that during that meeting about having to go back  
25 and explain the deal to the Barclays board?

Page 185

1 HIGHLY CONFIDENTIAL - A. KIRK

2 A. No, not in that meeting.

3 Q. Did you hear that at another meeting?

4 A. No, I didn't hear it in any meeting.

5 Q. When you say no, you don't think it  
6 happened or you don't remember?

7 A. No, I didn't hear it. Didn't  
8 happen -- that was not discussed in front of me.  
9 This was what day again? This was the  
10 19th?

11 Q. On Friday, the 19th.

12 A. Friday, yes, no.

13 Q. You had a meeting --

14 A. Yeah.

15 Q. -- late in the afternoon where -- this  
16 is late in the afternoon where I think you said  
17 this is when Barclays came back and said they  
18 thought the value of the securities didn't match  
19 the value of the loan and so they were looking  
20 for additional unencumbered assets?

21 A. Uh-huh.

22 Q. Is that right?

23 A. Yes.

24 Q. And Mr. Gaffey asked you a couple of  
25 times about whether they gave a target or a

Page 186	Page 187
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b> 2       <b>number for how much more they would need?</b> 3       A. Yes. 4       <b>Q. Right?</b> 5       As best you can recall, they didn't 6       give you such a number, correct; is that right? 7       A. That's correct. 8       <b>Q. And nobody -- Mr. Klein didn't say</b> 9       <b>anything about having to have a certain number</b> 10       <b>to go back to the Barclays board?</b> 11       A. No. 12       <b>Q. I'm going to mark as my only exhibit</b> 13       <b>as 326 an e-mail from you to Mr. McDade.</b> 14       <b>(Exhibit 326, an e-mail chain, marked</b> 15       <b>for identification, as of this date.)</b> 16       A. Right. 17       <b>Q. Do you recall sending this e-mail to</b> 18       <b>Mr. McDade?</b> 19       A. I do recall that. 20       <b>Q. So the bottom e-mail on the page is</b> 21       <b>from you to Mr. McDade. It's sent on that</b> 22       <b>Friday at 3:39.</b> 23       A. Uh-huh. 24       <b>Q. Do you see that?</b> 25       A. Yes.</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b> 2       <b>Q. You write to Mr. McDade, "Rich Ricci</b> 3       <b>just told me he won't blow up this trade by</b> 4       <b>being a pig."</b> 5       <b>Do you recall the context for that?</b> 6       A. Well, the Barclays team had left. 7       Bart was on the road and he was having 8       discussions with Ian about whatever additional 9       assets there were. You know, I implored to 10       these guys that they shouldn't blow this deal 11       up, 10,000 jobs were at stake, you know, there 12       was a tremendous amount of pressure on all of 13       us, and Rich said to me something to this 14       effect: I won't blow the deal up by being too 15       piggish. 16       I wanted to make sure Bart knew that 17       because they were wrapping up with he and Ian 18       whatever issues there were, so that's why I sent 19       the e-mail. 20       <b>Q. Was there a concern on the Lehman said</b> 21       <b>that the Barclays people were being too piggish?</b> 22       A. I was concerned that we were going to 23       go into bankruptcy court, which there's always 24       uncertainty, and try to describe a deal that 25       didn't look like the deal that they had heard</p>
Page 188	Page 189
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b> 2       about two days before. 3       So my primary concern at that point 4       was that there be as much flexibility, so to 5       speak, at least give the -- enough operating 6       room that we wouldn't go into court, have the 7       transaction denied, and have to put the padlocks 8       on the building Saturday morning. 9       So -- and I've been around many, many 10       bankruptcy cases over two decades. Wildly 11       uncertain things happen in these courts in 12       circumstances. 13       <b>Q. Sorry. Is that what you meant by</b> 14       <b>"blow up the trade"?</b> 15       A. Yes. 16       <b>Q. That the bankruptcy court wouldn't</b> 17       <b>approve the deal?</b> 18       A. That's correct. 19       <b>Q. And you were, just so I understand</b> 20       <b>your testimony, you were concerned that that</b> 21       <b>might happen if Barclays was too piggish?</b> 22       A. Yeah, I think there were a myriad of 23       risks that could have done, you know, I mean, 24       the -- the stress of that not happening that 25       evening and you only had one shot at it, you</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b> 2       know, it was -- certainly everybody was very 3       concerned that this was sort of a do-or-die 4       situation, literally. 5       <b>Q. Was the comment about being a pig</b> 6       <b>related to the effort to find unencumbered</b> 7       <b>assets?</b> 8       A. Yes. 9       <b>Q. And you didn't -- so you don't have,</b> 10       <b>since that's in Mr. Lowitt's bailiwick, you</b> 11       <b>don't have a specific number or value that</b> 12       <b>would --</b> 13       A. No, this comment had been made to me. 14       I just wanted to pass it along. 15       <b>Q. And then Mr. McDade asks you back,</b> 16       <b>"Are the shorts all gone?" What was that a</b> 17       <b>reference to? Did you have an understanding as</b> 18       <b>to what he meant?</b> 19       A. I don't recall specifically why he 20       asked that, but that was a problem we were 21       dealing with all week at Lehman, that we were 22       naturally getting longer every day because our 23       hedges were either derivatives that had been 24       wiped out by the terms of their contracts or 25       short positions that were being bought in on the</p>

Page 190

1           HIGHLY CONFIDENTIAL - A. KIRK  
2 other side.  
3           So, you know, asset prices were  
4 imploding and we were naturally getting longer  
5 every day. So his question was how long is the  
6 firm, so to speak, at this moment in time. I  
7 believe -- I don't -- so that's what I -- I  
8 guess I tracked that down.  
9           Q. And that's what your answer to  
10 Mr. McDade says?  
11           A. Yeah. Yeah.  
12           MR. ROTHMAN: That's all the questions  
13 I have. Thank you.  
14           THE WITNESS: You're welcome.  
15 EXAMINATION BY  
16 MR. TECCE:  
17           Q. Mr. Kirk, my name is James Tecce. I'm  
18 an attorney at Quinn Emanuel. We are special  
19 counsel to the Creditors Committee. I just  
20 wanted to ask you a couple of follow-up  
21 questions.  
22           Going back to Friday, September 19th,  
23 I believe it is, I think that you had said that  
24 it was your belief on that day that JPMorgan  
25 Chase would be "hostile," I believe was the word

Page 192

1           HIGHLY CONFIDENTIAL - A. KIRK  
2 DTC account. So I don't remember whether they  
3 had closed -- I learned about it all on Friday.  
4 I just don't remember if it was for that day or  
5 it was for the previous day.  
6           Q. Do you know what the basis -- do you  
7 have an understanding of the basis of  
8 Mr. Lowitt's statements that Chase had been  
9 taking collateral?  
10           A. Well, he was dealing with them  
11 directly, so they were -- my understanding was  
12 that they were threatening to not clear our  
13 transactions without additional collateral prior  
14 to the bankruptcy.  
15           Q. Did he provide any examples of that to  
16 you?  
17           A. The one example that he provided was  
18 that they requested Thursday night, the 11th --  
19 is that right? Yeah, the 11th, that Lehman  
20 deliver another \$5 billion to them prior to the  
21 opening on Friday.  
22           Q. Going forward to the 21st, I believe  
23 Sunday, the day of the closing, September 21,  
24 you had just spoken briefly about the dispute  
25 regarding the guarantee of trades with the DTC.

Page 191

1           HIGHLY CONFIDENTIAL - A. KIRK  
2 that you used, with respect to the transaction.  
3           What was the basis for that belief?  
4           A. The fact that they had shut our DTC  
5 account down was one issue. The other issue was  
6 that Barclays had described to me they were  
7 having a dispute with JPMorgan about the  
8 transfer of collateral. In addition to that,  
9 JPMorgan had been, my -- my understanding, it  
10 had been described to me by Ian that JPMorgan  
11 over time prior to the bankruptcy had been  
12 squeezing a lot of additional collateral out of  
13 Lehman Brothers along the way.  
14           Q. Do you have an understanding as to  
15 when JPMorgan froze the DTC account?  
16           A. You know, it was either Thursday or  
17 Friday. I don't remember. I think it was --  
18 I'm pretty sure it was Friday, but it may have  
19 been Thursday.  
20           Q. And when were you told about the  
21 dispute between Chase and Barclays that you  
22 described?  
23           A. Friday morning.  
24           Q. Going forward --  
25           A. And that's when I learned about the

Page 193

1           HIGHLY CONFIDENTIAL - A. KIRK  
2           Were you aware of any other disputes  
3 besides that issue between Chase and Barclays at  
4 that time?  
5           A. They were still arguing about the  
6 transfer of collateral, your clients were there  
7 for some of those arguments, in a, what I would  
8 refer to as a giant conference room with 50  
9 people in it and a lot of yelling.  
10           Q. Right. And do you remember the  
11 substance of those disputes regarding the  
12 collateral?  
13           A. JPMorgan felt as if Barclays should  
14 pay them and take additional collateral to  
15 complete the repo transfer from the Fed, and in  
16 addition to that, they actually asked for  
17 Barclays to buy additional collateral even  
18 beyond that that they had gotten from Lehman  
19 Brothers earlier.  
20           Q. And do you have an understanding as to  
21 what the resolution of that dispute was?  
22           A. No, they wouldn't tell us.  
23           Q. Do you have an understanding of anyone  
24 at Lehman who does know the resolution of that  
25 dispute?

Page 194	Page 195
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       A. I don't know if anybody at Lehman does</p> <p>3 know that.</p> <p>4       <b>Q. Do you know if Mr. McDade knows the</b></p> <p>5 <b>answer?</b></p> <p>6       A. I don't know that. I was in the room</p> <p>7 when they told us they wouldn't tell us. I</p> <p>8 don't know if there were conversations after</p> <p>9 that.</p> <p>10      <b>Q. Do you have an understanding if</b></p> <p>11 <b>Mr. Klein knows the resolution of the dispute?</b></p> <p>12      A. I don't know that he knows it. He</p> <p>13 probably does.</p> <p>14      <b>Q. Do you have an understanding as to</b></p> <p>15 <b>whether or not the resolution of that dispute</b></p> <p>16 <b>resulted in any additional assets being</b></p> <p>17 <b>transferred or liabilities being assumed by</b></p> <p>18 <b>Barclays in connection with the transaction?</b></p> <p>19      A. I don't know the answer to that. This</p> <p>20 was a delivered to us as a fait accompli and,</p> <p>21 you know, at 2 I went home. There may have been</p> <p>22 somebody dealing with transfers of assets and</p> <p>23 have some insight into that. Ian might have</p> <p>24 insight into it, you know, what happened past</p> <p>25 that in terms of the closing, but he may not</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2 have because, you know, there may not be -- I</p> <p>3 don't think they would necessarily have had to</p> <p>4 have involved Lehman in any transfer of assets</p> <p>5 between JPMorgan and Barclays. They may have.</p> <p>6 They may not have. I don't know.</p> <p>7       (Exhibit 327, an e-mail chain dated</p> <p>8 September 21, 2008, marked for</p> <p>9 identification, as of this date.)</p> <p>10      <b>Q. I'm handing the witness an Exhibit</b></p> <p>11 <b>327, an e-mail dated 9/21/2008.</b></p> <p>12      A. Uh-huh.</p> <p>13      <b>Q. Have you ever seen this document</b></p> <p>14 <b>before?</b></p> <p>15      A. Yes.</p> <p>16      <b>Q. What is it?</b></p> <p>17      A. This is a series of e-mails between</p> <p>18 myself and Jeff Michaels, who I described</p> <p>19 earlier was global head of government and agency</p> <p>20 trading, and who I was -- reached to deal with</p> <p>21 directly with the -- his counterparties at</p> <p>22 Barclays to describe what the settlement issues</p> <p>23 going forward were in his business so they could</p> <p>24 get some sense of what the risk of those</p> <p>25 settlement issues were.</p>
Page 196	Page 197
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       <b>Q. And this, again, correct me if I'm</b></p> <p>3 <b>wrong, this is the issue of the settling of the</b></p> <p>4 <b>trades involving the DTC?</b></p> <p>5       A. Yes.</p> <p>6       <b>Q. And just going up to the e-mail Sunday</b></p> <p>7 <b>September 21, 18:13:18, do you see that? I</b></p> <p>8 <b>believe it's the second e-mail down from the top</b></p> <p>9 <b>of the page.</b></p> <p>10      A. Uh-huh.</p> <p>11      <b>Q. And Mr. Michaels asks you, I believe,</b></p> <p>12 <b>"Okay, here is where we are." He says, "We had</b></p> <p>13 <b>a problem with Chase on Friday re about 8B of</b></p> <p>14 <b>collateral. They are the ones holding up this</b></p> <p>15 <b>transaction. Chase holds the cards and Alastair</b></p> <p>16 <b>and Beth are involved."</b></p> <p>17      <b>What's your understanding of what</b></p> <p>18 <b>Mr. Michaels is saying in that e-mail?</b></p> <p>19      A. He's certainly saying that JPMorgan</p> <p>20 Chase is acting as a hostile party. They're</p> <p>21 holding up the transaction. There's a dispute</p> <p>22 on Friday. I don't know what exact dispute he's</p> <p>23 referring to because there were lots of disputes</p> <p>24 with JPMorgan at this point in time. They had</p> <p>25 shut our DTC account down. They had taken the</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2 DTC deposit from us. They were having a dispute</p> <p>3 with Barclays at the same time. And you know,</p> <p>4 Alastair, Alastair Blackwell, as head of</p> <p>5 operations, and Beth I think it's Rudolfker who</p> <p>6 he's referring to, I assume who is a lawyer,</p> <p>7 are, you know, involved in trying to settle this</p> <p>8 position.</p> <p>9       Why I asked him how many treasuries</p> <p>10 was he short in his position I don't recall.</p> <p>11      <b>Q. What are treasuries?</b></p> <p>12      A. Government bonds.</p> <p>13      <b>Q. And let's actually just go back to</b></p> <p>14 <b>his -- to Mr. Michaels e-mail. He says about 8</b></p> <p>15 <b>billion of collateral. Do you know whether --</b></p> <p>16 <b>do you have an understanding as to whether or</b></p> <p>17 <b>not that was Fed repo collateral or other</b></p> <p>18 <b>collateral?</b></p> <p>19      A. I don't recall what collateral that</p> <p>20 was. There were a couple disputes with</p> <p>21 JPMorgan, so ...</p> <p>22      <b>Q. And the treasuries, what portion of</b></p> <p>23 <b>the assets transferred were the treasuries, what</b></p> <p>24 <b>basket of the assets transferred would the</b></p> <p>25 <b>treasuries have fallen into? Would they have</b></p>

Page 198

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **been part of the Fed repo or would they have**  
3 **been part of the, quote/unquote, unencumbered?**  
4 A. The issues that I'm discussing with  
5 him here are settlements. So these are going  
6 forward -- they're not actually positions.  
7 They're going-forward settlements between Lehman  
8 and other counterparties that Lehman's standing  
9 in the middle buying and selling all kind of  
10 securities. So that the positions were  
11 reflected.  
12 This would have reflected what risk  
13 there would be in settlements not settling in a  
14 normal way. So that -- but to answer your  
15 question, I don't -- I don't remember what the  
16 percentage of treasuries were in this. I wasn't  
17 dealing with him on any -- on that issue.  
18 MR. TECCE: Those are the only  
19 questions I have. Thank you for your time.  
20 MR. HUME: I have just a few  
21 questions.  
22 EXAMINATION BY  
23 BY MR. HUME:  
24 Q. Mr. Kirk, my name is Hamish Hume. We  
25 met before. I represent Barclays.

Page 200

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **discuss whether there was any good basis for**  
3 **disagreeing with Mr. Keegan's concerns. Do you**  
4 **recall describing that?**  
5 A. Yes.  
6 Q. I believe you testified that the three  
7 of you concluded there wasn't really a strong  
8 basis for disagreeing with Mr. Keegan. Do you  
9 recall that?  
10 A. Yes.  
11 Q. During those discussions, were you  
12 attempting to negotiate the best deal you could  
13 for Lehman Brothers?  
14 A. Yes.  
15 Q. Do you believe you participated in  
16 arm's length negotiations or that you witnessed  
17 arm's length negotiations?  
18 A. I'll be clear about that. I wasn't  
19 actually negotiating and I wasn't -- I had no  
20 authority to negotiate. I believe we were  
21 participating in arm's length negotiations,  
22 Lehman was, with Barclays.  
23 Q. You testified earlier in the  
24 deposition that you did not have an  
25 understanding regarding whether there would be a

Page 199

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **Mr. Kirk, during the week of September**  
3 **15 to September 22, 2008 that you've been**  
4 **questioned about, did you believe there was any**  
5 **other viable purchaser of Lehman Brothers other**  
6 **than Barclays?**  
7 A. No.  
8 Q. Did you believe there was any other  
9 alternative for Lehman Brothers other than the  
10 Barclays acquisition?  
11 A. Liquidation.  
12 Q. Did you believe the Barclays  
13 acquisition was the best outcome for the Lehman  
14 estate for all stakeholders?  
15 A. Yes.  
16 Q. During the questioning earlier in the  
17 deposition, you were asked -- you testified  
18 about discussions with Mike Keegan about  
19 valuation of assets, do you recall that,  
20 generally?  
21 A. Yes.  
22 Q. And I think at one point you were  
23 explaining that Mr. Keegan complained about  
24 certain asset values and that you at some point  
25 huddled with Ian Lowitt and Bart McDade to

Page 201

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **gain at Barclays on day one; do you recall that**  
3 **line of questioning?**  
4 A. Yes.  
5 Q. Did you have any knowledge about how  
6 Barclays would account for this transaction on  
7 its balance sheet?  
8 A. No.  
9 Q. Did you give any thought or analysis  
10 to how Barclays would account for the  
11 transaction on its balance sheet during the  
12 negotiations?  
13 A. No.  
14 Q. Did you have any knowledge of whether  
15 Barclays would be required to record an  
16 intangible asset in excess of a billion dollars  
17 on its balance sheet?  
18 A. No.  
19 Q. Did I understand your testimony  
20 earlier that you believed many of the assets  
21 being transferred to Barclays were of uncertain  
22 value?  
23 A. Yes.  
24 Q. And were many of those assets going to  
25 take some time to value?

Page 202	Page 203
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       A. Yes.</p> <p>3       Q. Did you understand the liabilities for</p> <p>4       cure payments and compensation to be estimated</p> <p>5       liabilities?</p> <p>6       A. Yes.</p> <p>7       Q. Did you understand that Barclays was</p> <p>8       stepping into the shoes of Lehman with respect</p> <p>9       to its exchange-traded derivative accounts?</p> <p>10      A. I was not aware of any agreements</p> <p>11      around the derivatives.</p> <p>12      Q. You weren't involved one way or the</p> <p>13      other with derivatives?</p> <p>14      A. I wasn't involved one way or the</p> <p>15      other.</p> <p>16      Q. Did you generally understand that both</p> <p>17      the assets and the liabilities Barclays was</p> <p>18      taking over were uncertain and difficult to</p> <p>19      value as of the time of the transaction?</p> <p>20      A. Yes.</p> <p>21      Q. Therefore, as of the time of the</p> <p>22      transaction, was it in your mind possible that</p> <p>23      after Barclays had taken the time to value the</p> <p>24      assets and the liabilities in accordance with</p> <p>25      its own methodology and accounted for the</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       transaction under its own accounting</p> <p>3       methodologies, that it would be possible that it</p> <p>4       record either a gain or a loss on the</p> <p>5       transaction --</p> <p>6       MR. GAFFEY: Objection.</p> <p>7       Q. -- as of day one?</p> <p>8       MR. GAFFEY: Object to the form.</p> <p>9       Q. Do you understand the question?</p> <p>10      MR. GAFFEY: You can ignore me.</p> <p>11      THE WITNESS: Okay.</p> <p>12      MR. GAFFEY: He can't, but you can.</p> <p>13      THE WITNESS: Okay. I never know with</p> <p>14      these objections if I'm supposed to ignore</p> <p>15      them or not.</p> <p>16      I think it was completely a matter</p> <p>17      of -- I had no idea what their accounting</p> <p>18      issues were on any of those fronts, so I was</p> <p>19      not aware of that, and whether they would</p> <p>20      end up recording a gain or loss over time</p> <p>21      would depend upon market conditions, hedging</p> <p>22      strategies, you know, disposition</p> <p>23      strategies, et cetera, that I had no insight</p> <p>24      into how they were going to execute them.</p> <p>25      Q. I understand that. I think you said</p>
Page 204	Page 205
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       that earlier. I'm saying, wholly apart from</p> <p>3       what would happen over time, after Barclays took</p> <p>4       the time to actually value the assets and</p> <p>5       liabilities as they were valued on day one,</p> <p>6       given the uncertainties in both the assets and</p> <p>7       values that Barclays took on and the limitations</p> <p>8       on what you knew about derivatives and other</p> <p>9       assets, was it in your mind at least possible</p> <p>10      that Barclays would record either a gain or a</p> <p>11      loss on day one, as of day one of the</p> <p>12      transaction?</p> <p>13      MR. GAFFEY: Objection to form.</p> <p>14      MR. ROTHMAN: Objection to form.</p> <p>15      A. Yes, it was possible.</p> <p>16      Q. Mr. Kirk, you testified a little bit</p> <p>17      about the transfer of collateral when Barclays</p> <p>18      replaced the Federal Reserve's lending position</p> <p>19      on the repo transaction, do you recall that,</p> <p>20      generally?</p> <p>21      A. Yes.</p> <p>22      Q. Were you aware of that when Barclays</p> <p>23      advanced its \$45 billion in cash to replace the</p> <p>24      Federal Reserve, Barclays did not receive the</p> <p>25      same collateral that had been pledged by Lehman</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       to the Federal Reserve in its repo?</p> <p>3       A. I was not aware of that.</p> <p>4       Q. Were you aware of the operational</p> <p>5       difficulties that arose when the Fed collateral</p> <p>6       was released into the Lehman clearing account so</p> <p>7       that some of that collateral disappeared or was</p> <p>8       tucked into other transactions and, therefore,</p> <p>9       could not be transferred to Barclays?</p> <p>10      A. I was not aware of any specifics of</p> <p>11      those issues. I was aware there was a -- some</p> <p>12      dispute.</p> <p>13      Q. I'd like to refer you very quickly to</p> <p>14      Exhibit 321.</p> <p>15      A. Okay.</p> <p>16      Q. The third-to-last page with the Bates</p> <p>17      number, number in the bottom corner, number 25.</p> <p>18      A. Okay.</p> <p>19      Q. Which I believe you testified</p> <p>20      reflected write-downs that were being discussed</p> <p>21      or considered by Bank of America in the</p> <p>22      potential Bank of America transaction; is that</p> <p>23      correct?</p> <p>24      A. That is correct.</p> <p>25      Q. Was this done during that weekend</p>



Page 206

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **before the bankruptcy when you were at the Fed?**  
3 A. This was done I believe the Friday,  
4 December -- September 12th.  
5 Q. And I don't know if you testified or  
6 not, but whose handwriting is this on this page?  
7 A. I don't know whose handwriting this  
8 is. It's not mine.  
9 Q. Was the general idea that Bank of  
10 America wanted haircuts or discounts from the  
11 marked to market book values that Lehman had for  
12 these assets?  
13 A. Yes.  
14 Q. And was that information shared with  
15 the Federal Reserve during discussions?  
16 A. Yes.  
17 Q. And did the Federal Reserve express  
18 any surprise or disagreement with that concept?  
19 A. I wasn't there when they shared it,  
20 this information.  
21 Q. How do you know it was shared with the  
22 Federal Reserve?  
23 A. Because we got this delivered to us at  
24 the Federal Reserve. We shared it with -- I  
25 think Bart gave a copy to Shafron and we shared

Page 208

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **and say it differently.**  
3 Did you at any time form an  
4 understanding at any time that weekend or that  
5 Monday, the 22nd, did you ever form an  
6 understanding that the unencumbered collateral  
7 in the clearance boxes that Ian Lowitt had  
8 identified to be transferred in the transaction  
9 were not going to be transferred in the  
10 transaction because of the way in which Barclays  
11 was dealing with the DTC settlement issue?  
12 MR. ROTHMAN: Objection to the form.  
13 MR. GAFFEY: Join.  
14 MR. TECCE: Join.  
15 A. No.  
16 Q. That was never your understanding?  
17 A. No.  
18 MR. HUME: No further questions.  
19 EXAMINATION BY  
20 MR. GAFFEY:  
21 Q. Just one or two. Your view that there  
22 was no other viable purchaser, would that view  
23 have changed if there were a \$5 billion  
24 immediate gain embedded in the transaction?  
25 Would you have had the view there might be

Page 207

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 it with John Mack, Vickram Pandit and John  
3 Thayne and their teams.  
4 Q. You testified earlier about the  
5 unencumbered collateral in the clearance boxes  
6 that Ian Lowitt identified as assets to be  
7 transferred, do you recall that?  
8 A. Yes.  
9 Q. And you testified that there was an  
10 agreement that those assets would be transferred  
11 made on the Friday, September 19?  
12 A. Yes.  
13 Q. Is that right?  
14 A. Correct.  
15 Q. You also testified that you were aware  
16 of an issue over the weekend relating to the  
17 DTC's desire for some support for settlement  
18 obligations on the Monday, correct?  
19 A. Correct.  
20 Q. And your general understanding was  
21 Barclays agreed to deposit \$250 million to  
22 address those settlement obligations?  
23 A. Yes.  
24 Q. Did anyone at any time ever tell you  
25 or lead you to believe -- let me withdraw that

Page 209

1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **viable purchasers then?**  
3 MR. HUME: Object to the form. Calls  
4 for speculation.  
5 A. I think the -- there were -- we were  
6 open to a transaction with anybody, so if  
7 somebody was willing to take that kind of risk,  
8 I assume they would have showed up.  
9 Q. Do you think they would have shown up  
10 if they were not told there was a \$5 billion  
11 haircut embedded in the transaction?  
12 MR. KELLEY: Objection. Calls for  
13 speculation.  
14 A. There was no certainty what that  
15 number was.  
16 Q. If, in addition to whatever else was  
17 said about the deal publicly, it was also said  
18 that there was a \$5 billion haircut embedded in  
19 the transaction, do you think there would have  
20 been other viable purchasers, do you know?  
21 MR. KELLEY: Objection. Calls for  
22 speculation.  
23 A. I don't know.  
24 Q. Are you able to say one way or the  
25 other?

Page 210	Page 211
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       A. Not really.</p> <p>3       <b>Q. Okay. Do you know the basis of the</b></p> <p>4       <b>estimated liabilities? You told Mr. Hume that</b></p> <p>5       <b>you knew that the liabilities for comp and cure</b></p> <p>6       <b>were estimated in some way. Do you know the</b></p> <p>7       <b>basis for the estimation?</b></p> <p>8       A. I assume that the basis was -- I don't</p> <p>9       know the estimation. I knew it came from our</p> <p>10      Finance Department.</p> <p>11      <b>Q. And your understanding at the time on</b></p> <p>12      <b>the Friday when you were looking at this was</b></p> <p>13      <b>that those were estimates based upon Lehman's</b></p> <p>14      <b>books, correct?</b></p> <p>15      A. Upon the work that Lehman had done.</p> <p>16      Certain, you know, liabilities only</p> <p>17      come up in the nature a transaction like this,</p> <p>18      right? So you cancel contracts you have</p> <p>19      liabilities. So they would be contingent and</p> <p>20      necessarily not necessarily on your books prior</p> <p>21      to doing an acquisition like that.</p> <p>22      So the -- it's -- it's not -- it's not</p> <p>23      completely -- it wouldn't be completely just</p> <p>24      what was actually recorded on the books. There</p> <p>25      would also be other liabilities that could be</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       triggered by the transaction itself.</p> <p>3       <b>Q. And back to this issue of a viable</b></p> <p>4       <b>purchaser, if it had been announced in addition</b></p> <p>5       <b>to the other components of the deal that --</b></p> <p>6       <b>withdrawn.</b></p> <p>7       You understood the assumed liabilities</p> <p>8       component of the deal to be a cost that Barclays</p> <p>9       would have in the transaction, correct?</p> <p>10      A. Correct.</p> <p>11      <b>Q. If it had been publicly announced that</b></p> <p>12      <b>the \$2 billion cost for compensation had been</b></p> <p>13      <b>deliberately inflated by a billion dollars, that</b></p> <p>14      <b>in your view would lower the actual cost for</b></p> <p>15      <b>Barclays, correct?</b></p> <p>16      MR. KELLEY: Same objection.</p> <p>17      A. If --</p> <p>18      <b>Q. If it --</b></p> <p>19      A. If the answer is if it was inflated,</p> <p>20      it would lower the cost, the answer is yes,</p> <p>21      that's factual, I think.</p> <p>22      <b>Q. If it had been announced in addition</b></p> <p>23      <b>to other components of the deal that the assumed</b></p> <p>24      <b>liability for compensation was deliberately</b></p> <p>25      <b>inflated by a billion dollars, do you have a</b></p>
Page 212	Page 213
<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       <b>view as to whether that might have attracted</b></p> <p>3       <b>other viable purchasers?</b></p> <p>4       A. The market was so uncertain and there</p> <p>5       was so much financial stress in the list of</p> <p>6       potential purchasers that I'm not sure there was</p> <p>7       anybody who could have executed it no matter</p> <p>8       what they thought the gain was because the</p> <p>9       market would have viewed it as too risky, so to</p> <p>10      speak, and too strategically risky in many ways</p> <p>11      and too risky from a financial standpoint to</p> <p>12      approve them for any board to approve it.</p> <p>13      <b>Q. In your view --</b></p> <p>14      A. No matter what the gain was.</p> <p>15      <b>Q. Sure. And in your view, was there at</b></p> <p>16      <b>any point where additional value in the deal</b></p> <p>17      <b>might have attracted other viable purchasers?</b></p> <p>18      MR. HUME: Objection. Asked and</p> <p>19      answered.</p> <p>20      A. None with the time to actually execute</p> <p>21      it.</p> <p>22      <b>Q. And what was your role in determining</b></p> <p>23      <b>whether or not there were other actual viable</b></p> <p>24      <b>purchasers?</b></p> <p>25      A. I didn't have a role in that.</p>	<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       <b>Q. Did you have any role at all in that?</b></p> <p>3       A. No, that was the role of the FIG, the</p> <p>4       FIG bankers, Financial Institutions Group.</p> <p>5       MR. GAFFEY: Thanks. Nothing further.</p> <p>6       THE WITNESS: Okay.</p> <p>7       MR. ROTHMAN: One question.</p> <p>8       EXAMINATION BY</p> <p>9       MR. ROTHMAN:</p> <p>10      <b>Q. Fair to say that you don't know how</b></p> <p>11      <b>the dispute -- the terms of the resolution of</b></p> <p>12      <b>the dispute with the DTC on that Sunday night?</b></p> <p>13      MR. HUME: Objection. Vague and</p> <p>14      ambiguous.</p> <p>15      MR. KELLEY: Asked and answered, too.</p> <p>16      A. I don't know. Did you say is it fair</p> <p>17      to say I don't know the terms?</p> <p>18      <b>Q. You don't know, yes.</b></p> <p>19      A. I only know it was described that</p> <p>20      there was 250 million put into the DTC account.</p> <p>21      I don't know the full terms. As I said, there</p> <p>22      may have been other terms that I was not aware</p> <p>23      of.</p> <p>24      <b>Q. You don't know, beyond that 250</b></p> <p>25      <b>million that we discussed, you don't know one</b></p>

Page 214

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       way or the other what was supposed to happen to  
3       the unencumbered assets that had been in that  
4       DTC box, correct?  
5       A. No, I don't know that.  
6       MR. ROTHMAN: Thank you.  
7       MR. HUME: Let me have follow up on  
8       that.  
9       EXAMINATION BY  
10      MR. HUME:  
11      **Q. When you say you don't know the**  
12      **unencumbered assets in the DTC box, to the**  
13      **extent that they were identified by Mr. Lowitt**  
14      **as transferable assets, was it your**  
15      **understanding they were going to be transferred**  
16      **as part of the deal?**  
17      (Continued on the next page to include  
18      the jurat.)  
19  
20  
21  
22  
23  
24  
25

Page 216

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       **CERTIFICATE**  
3       **STATE OF NEW YORK )**  
4       : ss  
5       COUNTY OF NEW YORK)  
6       I, Kathy S. Klepfer, a Registered  
7       Merit Reporter and Notary Public within and  
8       for the State of New York, do hereby  
9       certify:  
10      That ALEX KIRK, the witness whose  
11      deposition is herein before set forth, was  
12      duly sworn by me and that such deposition is  
13      a true record of the testimony given by such  
14      witness.  
15      I further certify that I am not  
16      related to any of the parties to this action  
17      by blood or marriage and that I am in no way  
18      interested in the outcome of this matter.  
19      I further certify that neither the  
20      deponent nor a party requested a review of  
21      the transcript pursuant to Federal Rule of  
22      Civil Procedure 30(e) before the deposition  
23      was completed.  
24      In witness whereof, I have hereunto  
25      set my hand this 31st day of August, 2009.  
-----  
KATHY S. KLEPFER, RPR, RMR, CRR, CLR

Page 215

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       MR. ROTHMAN: Objection to the form.  
3       A. Yes.  
4       MR. HUME: No further questions.  
5       THE WITNESS: I may have misunderstood  
6       the earlier question.  
7       MR. GAFFEY: I'm going to have mercy.  
8       I have no follow-up questions.  
9       (Time Noted: 3:06 P.M.)  
10      oOo  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

\_\_\_\_\_  
ALEX KIRK

Subscribed and sworn to  
before me this    day  
of       2009.

\_\_\_\_\_

Page 217

1       **HIGHLY CONFIDENTIAL - A. KIRK**  
2       **INDEX**  
3       WITNESS:       EXAMINATION BY       PAGE  
4       A. KIRK       Mr. Gaffey       5, 208  
5       Mr. Rothman       176, 213  
6       Mr. Tecce       190  
7       Mr. Hume       213, 214  
8       EXHIBITS:       PAGE  
9       Exhibit 316, an e-mail chain with ..... 121  
10      attached balance sheet  
11      Exhibit 317, a document bearing Bates ..... 132  
12      Nos. 10310050  
13      Exhibit 318, a document bearing Bates ..... 137  
14      Nos. 10325943 with attachment  
15      Exhibit 319, an e-mail chain ..... 140  
16      Exhibit 320, a document bearing Bates ..... 145  
17      Nos. 10293820  
18      Exhibit 321, a document bearing Bates ..... 153  
19      Nos. AK-LB-BANKR00002 through 27  
20      Exhibit 323, a document bearing Bates ..... 160  
21      Nos. AK-LB-BANKR000030  
22      Exhibit 324, a document bearing Bates ..... 171  
23      Nos. AK-LB-BANKR0000987 through 119  
24      Exhibit 325, a document bearing Bates ..... 174  
25      Nos. AK-LB-BANKR000188

Page 218	Page 219
<p>1           HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2           INDEX (Cont'd.)</p> <p>3   EXHIBITS:                               PAGE</p> <p>4   Exhibit 326, an e-mail chain ..... 186</p> <p>5   Exhibit 327, an e-mail chain dated ..... 195</p> <p>6   September 21, 2008</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1           HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2   NAME OF CASE: In re Lehman Brothers</p> <p>3   DATE OF DEPOSITION: August 31, 2009</p> <p>4   NAME OF WITNESS: Alex Kirk</p> <p>5   Reason Codes:</p> <p>6       1. To clarify the record.</p> <p>7       2. To conform to the facts.</p> <p>8       3. To correct transcription errors.</p> <p>9   Page _____ Line _____ Reason _____</p> <p>10   From _____ to _____</p> <p>11   Page _____ Line _____ Reason _____</p> <p>12   From _____ to _____</p> <p>13   Page _____ Line _____ Reason _____</p> <p>14   From _____ to _____</p> <p>15   Page _____ Line _____ Reason _____</p> <p>16   From _____ to _____</p> <p>17   Page _____ Line _____ Reason _____</p> <p>18   From _____ to _____</p> <p>19   Page _____ Line _____ Reason _____</p> <p>20   From _____ to _____</p> <p>21   Page _____ Line _____ Reason _____</p> <p>22   From _____ to _____</p> <p>23   Page _____ Line _____ Reason _____</p> <p>24   From _____ to _____</p> <p>25                               ALEX KIRK</p>